

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 12

9 Transcript of Jury Trial before The Honorable  
10 James O. Browning, United States District Judge, Las  
11 Cruces, Dona Ana County, New Mexico, commencing on  
12 February 13, 2018.

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14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.  
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,  
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1	I N D E X	
2	EXAMINATION OF JERRY MONTOYA	
3	By Mr. Jewkes	3935
4	By Ms. Duncan	3960
5	By Mr. Beck	4001
6	By Ms. Fox-Young	4011
7	By Ms. Duncan	4013
8	EXAMINATION OF ROGELIO FIERRO	
9	By Mr. Beck	4019
10	By Mr. Villa	4029
11	By Mr. Beck	4031
12	EXAMINATION OF TIMOTHY MARTINEZ	
13	By Ms. Armijo	4036
14	By Ms. Duncan	4147
15	By Mr. Jewkes	4197
16	By Mr. Villa	4218
17	By Mr. Jewkes	4262
18	By Ms. Armijo	4268
19	By Ms. Duncan	4277
20	DIRECT EXAMINATION OF JACK VIGIL	
21	By Ms. Armijo	4283
22	REPORTER'S CERTIFICATE	4295
23	EXHIBITS ADMITTED	
24	Defendants' FJ and FI Admitted	3960
25	Defendants' FG Admitted	3967

1	Defendants' FL, FK, and FM Admitted	4005
2	Defendants' FO Admitted	4163
3	Defendants' FP Admitted	4183
4	Defendants' V19 Admitted	4250
5	Government 236 Admitted	4039
6	Government 491, 763, 764, and 765 Admitted	4053
7	Government 676 and 677 Admitted	4138
8		
9		
10		
11		
12		
13		
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1 THE COURT: Let's go on the record. I do  
2 have a juror that's not feeling well. It's Ms. May,  
3 juror number 13 on the back row, fourth in. She's  
4 from Santa Fe. She was in the emergency room a good  
5 chunk of last night. She's getting some medicines.  
6 But she obviously can't go over and pick them up.  
7 She thinks she'll be fine. She's been in contact  
8 with Ms. Wild. So one of my clerks may go over and  
9 pick up some medicine for her so she can continue to  
10 sit there. She feels like she can sit there, but  
11 she doesn't feel like she can run around during the  
12 lunch hour and things like that. I think we're all  
13 fighting it. So I don't know what she's got or what  
14 she's going to get.

15 Is there anything we need to discuss  
16 before we bring the jury in? Anything I can do for  
17 you, Mr. Villa?

18 MR. VILLA: Your Honor, there was an issue  
19 that was brought to our attention yesterday that I  
20 think we may have to take up ex parte. All the  
21 defense certainly can be here, but think the  
22 Government we'd ask to be briefly excused. It has  
23 to do with the United States Marshal and service of  
24 writs.

25 THE COURT: Well, I'm aware of what

1 occurred. I don't know what to do.

2 THE CLERK: Can I bring the witness in?

3 THE COURT: Go ahead and bring the witness  
4 in.

5 MR. VILLA: Well, I guess --

6 THE COURT: It's just a mistake, as far as  
7 I can tell. But I'll let you put it on the record,  
8 whatever you need to put on.

9 MR. VILLA: Well, I guess that according  
10 to the United States Marshal and Deputy Mickendrow,  
11 he had a list of -- I don't know exactly what it was  
12 because I haven't seen it -- but that included names  
13 of folks that had been writted by the defense, I  
14 don't know by who; and that somehow Agent Acee saw  
15 that list. And then some communications that Deputy  
16 Mickendrow had with Agent Acee.

17 THE COURT: Well, you may be right. My  
18 version of what I heard is that Mr. Acee saw one  
19 name.

20 MR. VILLA: That's right. And so I mean,  
21 I don't know if we can order Agent Acee, if the cat  
22 isn't already out of the bag, not to reveal that to  
23 the U.S. Attorneys.

24 THE COURT: Mr. Acee, have you talked to  
25 anybody about that mistake on the U.S. Attorney's

1 side?

2 MR. ACEE: No, sir. I even forgot the  
3 name.

4 THE COURT: Okay. Don't talk to them  
5 about it. It's ex parte. So just protect the  
6 defendants on that. Don't mention that one name.  
7 Was it just one name?

8 MR. ACEE: It was a list. I saw one name,  
9 and I forgot who it was.

10 THE COURT: If you want to do something  
11 more on that, Mr. Villa, I'll let you, but --

12 MR. VILLA: I don't know. Maybe we can  
13 see the list so we can identify who that witness  
14 was. I don't know what else we can do at this point  
15 unless --

16 THE COURT: I think Mr. Mickendrow can  
17 tell you what the witness is. I think he'll tell  
18 you.

19 MR. VILLA: That's all I have, Your Honor.

20 THE COURT: But let me know what you want  
21 at a break or something. I'll ask the Government to  
22 leave and you can make a better record.

23 How about from the Government? Anything  
24 from the Government? Ms. Armijo?

25 MS. ARMIJO: No, Your Honor.

1 MR. CASTELLANO: No, Your Honor.

2 THE COURT: Anything else from the  
3 defendants? I do have a set of jury instructions.

4 I'll get those typed up in Albuquerque  
5 today and by the end of the day they should send  
6 them back. I'm going to have to start editing them.  
7 I think everything is kind of there, but I need a  
8 heavy edit of these RICO instructions to try to  
9 figure out where we're going to put certain things  
10 and start that process.

11 MS. JACKS: Your Honor, there was the  
12 issue with the offer of the 23 physical location  
13 histories. I'm not sure if those are still being  
14 offered, but I'm prepared to argue if they are.

15 THE COURT: Is this Ms. Fox-Young's V  
16 numbers?

17 MS. FOX-YOUNG: Your Honor, in response to  
18 some of the defendants' objections, I'll withdraw  
19 that motion, and we'll deal with them as we proceed.

20 THE COURT: We did get that V21 in?

21 MS. FOX-YOUNG: Yes.

22 THE COURT: But the rest of them you're  
23 just withdrawing?

24 MS. FOX-YOUNG: At this time, yes, Your  
25 Honor.

1 (The jury entered the courtroom.)

2 THE COURT: Well, good morning, ladies and  
3 gentlemen. I appreciate everybody being back and  
4 ready to go and on time. I know we're kind of  
5 struggling with some people that are not feeling  
6 well, and we'll certainly assist you in getting any  
7 medication or anything that you need. So let Ms.  
8 Standridge or Ms. Wild know, and we'll try to help  
9 you with that.

10 I stopped by Walmart and got my little bag  
11 of medicine today, too. I think it's beginning to  
12 wear on all of us. And I appreciate everybody  
13 hanging in there and trying to get it done and  
14 staying and gutting it out. So I appreciate it very  
15 much.

16 All right, Mr. Montoya. I'll remind you  
17 that you're still under oath.

18 THE WITNESS: Yes, sir.

19 THE COURT: And Mr. Jewkes, if you wish to  
20 continue your cross-examination of Mr. Montoya, you  
21 may do so at this time.

22 MR. JEWKES: Your Honor, may it please the  
23 Court.

24 THE COURT: Mr. Jewkes.  
25



1 JERRY MONTOYA,  
2 after having been previously duly sworn under  
3 oath, was questioned, and continued testifying  
4 as follows:

5 CONTINUED CROSS-EXAMINATION

6 BY MR. JEWKES:

7 Q. Good morning, Mr. Montoya.

8 A. Good morning, sir.

9 Q. Last night we left off, it was March 7,  
10 2014, and I believe you told us there were four of  
11 you in Javier Molina's cell?

12 A. There was four of us, yes.

13 Q. Sir?

14 A. Yes, four of us inside the cell, yes.

15 Q. And what was the cell number?

16 A. B105.

17 Q. 105. And the four were you, Javier  
18 Molina, Timothy Martinez?

19 A. And Jerry Armenta.

20 Q. And Jerry Armenta. All right. Now, was  
21 anyone at that time using drugs inside the cell?

22 A. They had went to use drugs. I don't know  
23 if they actually used the drugs inside the cell.  
24 But they went to use drugs.

25 Q. When you say "they," who is they?

1 A. Three of them: Timothy Martinez, Javier  
2 Molina, and Blue, who is Mario Rodriguez. They went  
3 in there to use the drugs. I don't know if they  
4 used the drugs. But that's what the plan was.

5 Q. Did they go into the cell before you did?

6 A. Yes, sir, they did.

7 Q. Did you see any evidence of drug use  
8 inside the cell?

9 A. I didn't go in there to use drugs. I went  
10 in there for a whole other reason.

11 Q. Did you see a syringe inside the cell?

12 A. I didn't see a syringe at that time, no,  
13 sir. I didn't look around.

14 Q. All right. And you told us that you were  
15 the first one to lay a hand on Javier Molina; is  
16 that correct?

17 A. Yes, sir. Timothy Martinez was the first  
18 one to lay a hand on him. That's what I had said.

19 Q. All right. I stand corrected. Tell us  
20 exactly what Timothy Martinez did.

21 A. Well, the three went into the room. How I  
22 remember it, I'm looking inside the cell, and Javier  
23 Molina is hunched over, mixing some Suboxones in the  
24 spoon. And while he's mixing the Suboxones, Timothy  
25 Martinez comes behind him and swoops him up by the

1 neck.

2 Q. Let me stop you just a minute.

3 A. Yes.

4 Q. You've already established that there was  
5 Suboxone inside the cell?

6 A. That's how they got Javier into the cell.

7 Q. Sir?

8 A. That's how they lured him into the room,  
9 by drug use.

10 Q. So Javier was actually mixing the drugs?  
11 Javier Molina?

12 A. Yes, but I don't know if they used the  
13 drugs. You asked if they used the drugs. There was  
14 drugs present. I don't know if they used the drugs.

15 Q. I stand corrected.

16 A. Yes, sir.

17 Q. And then Timothy Martinez comes up from  
18 behind?

19 A. Yes, sir.

20 Q. And is Javier Molina standing or sitting?

21 A. No, no. He's standing up, sir. He's  
22 standing.

23 Q. And Timothy grabs him around the throat?

24 A. Yes.

25 Q. From behind?

1 A. Yes, sir.

2 Q. Puts an arm lock on him and chokes him?

3 A. And choke, yes. Yes, sir.

4 Q. And there comes a point in time when  
5 Mr. Molina went to the ground; is that correct?

6 A. Absolutely, yes, sir.

7 Q. And Timothy Martinez did what we call a  
8 leg sweep; is that correct?

9 A. Put him down.

10 Q. You know what a leg sweep is?

11 A. Not exactly, but I could figure it out.

12 Q. Took his legs out from under him?

13 A. Yeah, put him down.

14 Q. And when Molina hits the ground, is he on  
15 his face, on his side, or on his back?

16 A. I seen Timothy lay him down on his back.

17 Q. Choking?

18 A. He was already passed out. So he put him  
19 on the floor. He's no longer choking him. He's  
20 laying him down.

21 Q. So he was motionless?

22 A. Yes.

23 Q. And who is the next person to approach  
24 Mr. Molina?

25 A. Myself and Jerry Armenta.

1 Q. You and Jerry Armenta?

2 A. Yes, sir.

3 Q. Both of your arms?

4 A. With both arms, yes.

5 Q. Who is the first one to stab Mr. Molina?

6 A. Myself.

7 Q. While you're stabbing him, does anyone  
8 else stab him?

9 A. Yes, sir.

10 Q. Both of you working together?

11 A. Yes, sir.

12 Q. I believe you testified yesterday you must  
13 have stabbed him 20 times?

14 A. At least half, yes, sir.

15 Q. Are you aware of how many stab wounds he  
16 had on him?

17 A. They said over 40, yesterday; correct?

18 Q. I've heard that. Mr. Montoya, where did  
19 you stab Mr. Molina? Where on his body?

20 A. Here in the middle of his chest.

21 Q. What about Timothy Martinez? Where did he  
22 stab him?

23 A. He just choked him.

24 Q. He just choked him?

25 A. Yes.

1 Q. Someone else stabbed him besides you?

2 A. Yes, sir.

3 Q. And who was that?

4 A. Jerry Armenta.

5 Q. Jerry Armenta. All right.

6 A. Yes, sir.

7 Q. Mr. Montoya, why did you have to stab him  
8 so many times?

9 A. I wasn't counting, sir. I was just  
10 following instructions that they told me to do.

11 Q. Would it be fair to say you were in a  
12 state of rage?

13 A. No, sir.

14 Q. No?

15 A. No.

16 Q. No rage?

17 A. I wasn't in a state of rage. I was -- my  
18 mind was blank. I know I had to just do one thing,  
19 and the one thing only.

20 Q. Mario Rodriguez. What part did he play in  
21 the assault?

22 A. From what I can recall, Mario Rodriguez  
23 held Javier Molina's hands down while Timothy was  
24 choking him so he wouldn't defend the chokehold. So  
25 they were working together as a group. He choked

1 him, laid him down.

2 Q. All right. We're in the cell at this  
3 time.

4 A. Yes, sir.

5 Q. Did Mario Rodriguez ever kick Mr. Molina  
6 in the head?

7 A. No, sir, he did not.

8 Q. What about downstairs, when Molina  
9 escaped?

10 A. Mario Rodriguez?

11 Q. Yes.

12 A. I don't believe so, sir.

13 Q. You never saw Mario Rodriguez either kick  
14 or stomp Mr. Molina?

15 A. No, I did not see Mario Rodriguez kick or  
16 stomp Javier Molina, sir. No, not Mario.

17 Q. There comes a point in time when  
18 Mr. Molina is able to get up and leave the cell?

19 A. Yes, sir.

20 Q. And where did he go?

21 A. He bulldozed his way out the cell. The  
22 only place to go is towards the exit door for help.  
23 So that's where he was headed.

24 Q. And who followed him?

25 A. Myself and Jerry Armenta followed him.

1 Q. And what did Mario Rodriguez do?

2 A. Mario Rodriguez is yelling at us, myself  
3 and Jerry Armenta, to get him, to keep on, keep on  
4 the attack, keep stabbing him; like, it wasn't over  
5 because he was still up. That's what Mario  
6 Rodriguez was doing.

7 Q. And Mr. Molina was able to make it  
8 downstairs to the rec room, was he not?

9 A. He made it to the exit door.

10 Q. Sir?

11 A. He made it to the exit door.

12 Q. Okay. And then what?

13 A. Myself and Jerry Armenta continued with  
14 the assault. After a few seconds I stopped, and I  
15 walked away towards my cell.

16 Q. Mr. Montoya, how well did you know Javier  
17 Molina?

18 A. I didn't know him. I didn't know him  
19 prior till he moved into that pod with me. I didn't  
20 know him at all. He got there and we got acquainted  
21 with each other. We were okay with one another. We  
22 weren't best friends, but we weren't enemies. I had  
23 no problem with Javier at all. I lived there with  
24 him for the whole time, maybe a year.

25 Q. Mr. Montoya?



1 A. Yes, sir.

2 Q. I'm going to ask you a series of questions  
3 which hopefully can be answered with simple  
4 responses.

5 A. Okay. I'm sorry, sir. My apologies.

6 Q. No problem. So how long had you been  
7 housed with Javier Molina? A period of a month?

8 A. Maybe over a year, sir.

9 Q. Maybe over a year?

10 A. Yes.

11 Q. And did you get along with him?

12 A. We were cordial with one another.

13 Q. Did he get along with the other inmates?

14 A. Yeah. He was a knucklehead, but he got  
15 around with others.

16 Q. There was some friction between he and  
17 Jerry Armenta because of Jerry Armenta's daughter?

18 A. Excuse me?

19 Q. I said, there was some friction between  
20 Javier Molina and Jerry Armenta because of Jerry  
21 Armenta's disabled daughter? Do you recall that?

22 A. No, sir. I remember Jerry Armenta saying  
23 something like that. But to my knowledge, sir, that  
24 was a fabricated story.

25 Q. Fabricated?

1 A. Story.

2 Q. By whom?

3 A. Armenta.

4 Q. Armenta --

5 A. Yes.

6 Q. -- fabricated that story?

7 A. I think so. I'm not exactly sure, but I  
8 don't think anybody said anything to him like that.  
9 Not that I remember, sir.

10 Q. Did Javier Molina ever show disrespect to  
11 any other inmates?

12 A. He showed disrespect to -- yeah, he did.

13 Q. He was somewhat mouthy at times, was he  
14 not?

15 A. He could be, sir, yeah.

16 Q. And it did cause some problems from time  
17 to time, did it not?

18 A. For him.

19 Q. Did you ever witness Javier Molina exhibit  
20 somewhat erratic behavior? Do you know what I mean  
21 by "erratic behavior"?

22 A. Explain it to me, sir.

23 Q. Disruptive.

24 A. I guess he could be disruptive at times  
25 when he was on his high horse.

1 Q. Would you say he was well-liked by the  
2 other inmates?

3 A. No.

4 Q. No?

5 A. No.

6 Q. Why not?

7 A. Well, he was unpredictable. Like you said  
8 a while ago, he was mouthy and disrespectful. So he  
9 wasn't everyone's favorite.

10 Q. But you're saying that played no part in  
11 the assault on March 7?

12 A. For me, no. They put a hit on him and we  
13 acted on that.

14 Q. Mr. Montoya, it was established yesterday  
15 on direct examination that in 2001 you were  
16 convicted for murder in the second degree.

17 A. Yes, sir.

18 Q. And along with that a conspiracy to commit  
19 murder in the first degree; yes?

20 A. Yeah.

21 Q. Aggravated battery and shooting at a  
22 dwelling or occupied building?

23 A. They added all that in.

24 Q. Correct me if I'm wrong, but I suspect  
25 that it was a drive-by shooting?

1 A. No, it was not, sir.

2 Q. It was not?

3 A. No, sir. It was not.

4 Q. But someone was killed?

5 A. A person got killed, yes, sir.

6 Q. A member of another gang?

7 A. I suspect so.

8 Q. It was gang-related?

9 A. Oh, yeah, it was. Yeah.

10 Q. Gang-related?

11 A. Um-hum.

12 Q. You were the shooter?

13 A. I was one of the shooters.

14 Q. One of the shooters?

15 A. Yes, sir.

16 Q. How many times did you shoot?

17 A. I shot a 12-gauge shotgun. I did not  
18 shoot one person. It was the other gun, which  
19 someone else had, shot and killed the person. Since  
20 I was with that person, we got charged for the same  
21 crime. So that's what it was.

22 Q. Was that a crime of rage or politics?

23 A. It was gang-related, so I would say it was  
24 spontaneous, you know. We didn't even know them.  
25 Gang-related. I was 19 years old at the time.

1 Q. Mr. Montoya, you were asked yesterday  
2 about the letter. And to be specific, we're talking  
3 about Government's Exhibit 756, the letter that was  
4 written to your lawyer by Jerry Armenta.

5 A. Okay.

6 Q. And did you know that he was going to  
7 write the letter on your behalf?

8 A. I did not know he was going to write the  
9 letter on my behalf.

10 Q. But I believe you said yesterday that  
11 Mario Rodriguez played a part in that, in that  
12 letter. Do you remember saying that?

13 A. I remember saying Mario wanted Jerry  
14 Armenta to take sole responsibility for the crime  
15 that was committed. Not pertaining to the letter.

16 Q. And where were the three of you housed at  
17 that time?

18 A. We were housed in Santa Fe, I think.

19 Q. Santa Fe?

20 A. PNM North.

21 Q. And the three of you -- did you discuss  
22 the possibility of a letter before it was written?

23 A. No.

24 Q. But you know that Blue played a part in  
25 it. In other words, he urged Jerry Armenta to do

1 that?

2 A. The letter part? No.

3 Q. Yes.

4 A. Just to take responsibility for the crime.

5 Q. And were you present when they discussed  
6 it?

7 A. I was. We were all in the yard. At one  
8 point a discussion had come up about Jerry Armenta  
9 taking sole responsibility, but I was far away. I  
10 was in the yards. I was in the back of the yard.  
11 They were in the front of the yard. So I wasn't  
12 present when they actually had the conversation.  
13 But I had heard later.

14 Q. You had heard later?

15 A. Yes.

16 Q. From whom?

17 A. Mario Rodriguez. It was prison talk, so  
18 it was in the yard.

19 Q. There was a lot of gossip going on about  
20 the Molina case?

21 A. Pretty much, yes, sir.

22 Q. A lot of people talking about it?

23 A. It was the thing to talk about at the  
24 time. Prison, you know -- that's what the SNM was  
25 talking about. We were all there together. That

1 was a topic.

2 Q. Was there some degree of planning between  
3 the three of you about how you were going to handle  
4 the defense?

5 A. I'm pretty sure there was.

6 Q. Well, I'm referring to you. Did you  
7 participate in any planning?

8 A. As far as the letter, no.

9 Q. What about Blue, Mario Rodriguez? How  
10 much of the planning of the defense did he  
11 participate in?

12 A. I don't recall. I just know that Mario  
13 wanted him to take responsibility for the murder,  
14 and whatever Armenta had come up with, to take  
15 responsibility. That would have been the plan or  
16 the defense for him. For the rest of us who were  
17 charged, we'd just go along those lines.

18 Q. Would it be fair to say that Blue, Mario  
19 Rodriguez, was kind of running the show at that time  
20 with regard to a defense?

21 A. He wasn't the shot-caller. As far as  
22 running the show, I'd have to say no. As far as  
23 giving his input on something, yes, but not  
24 shot-calling.

25 Q. What about manipulating the facts?

1           A.     Probably.  Whatever he's saying, they  
2 might use.  So giving his input, if it sounds good,  
3 they're going to use it.  And that's it, I guess;  
4 right?

5           Q.     The facts were manipulated in the  
6 investigation of this case with regard to some of  
7 you gentlemen.  Would you agree with that?

8           A.     Yes, yes.

9           Q.     You didn't tell the truth?

10          A.     At first, we didn't tell the truth.  Now  
11 we're telling the truth.  We have to.

12          Q.     We discussed yesterday to some extent the  
13 administrative hearing, and that would have been on  
14 April 4, 2014?

15          A.     I missed that, sir.  Could you repeat  
16 that?

17          Q.     Yes, sure will.

18                   On April 4, 2014, at Southern New Mexico  
19 Correctional Facility, you appeared before a hearing  
20 officer.  Do you recall that?

21          A.     At the facility?  A disciplinary officer,  
22 are you talking about?

23          Q.     I'm sorry.  I misspoke.  You were  
24 interviewed by STIU shortly after the incident?

25          A.     Okay.



1 Q. And what did you tell those officers?

2 A. What date?

3 Q. On or about somewhere between March 8 and  
4 March 10.

5 A. Okay.

6 Q. Do you recall that? You were interviewed  
7 by STIU?

8 A. I was interviewed, yes.

9 Q. And did you make any type of statement to  
10 the officers?

11 A. Yeah.

12 Q. What did you tell them?

13 A. It depends what we're talking about.

14 Whatever they were asking me, I was answering the  
15 questions.

16 Q. You denied knowing anything about the  
17 incident; correct?

18 A. About the murder?

19 Q. Yes.

20 A. I probably didn't discuss it with them at  
21 the time, no. It was too early. So I didn't want  
22 to give any type of heads-up to the gang unit to  
23 what had happened. So I was trying to keep it  
24 secretive at that time. And maybe, if they're  
25 asking questions, talk about something else, other

1 than the murder. It was brand-new; it was fresh.

2 Q. I believe at the time you were speaking to  
3 two agents with New Mexico State Police, Alvarado  
4 and Palomares.

5 A. When is that, sir? The 8th or the 10th?

6 Q. Probably looking at March 8; that's about  
7 the time.

8 A. Okay.

9 Q. And you made a couple false statements to  
10 those agents, did you not?

11 A. I didn't make a statement to them.

12 Q. Not at all?

13 A. I don't recall. I don't remember making  
14 any statement to the State Police or those agents at  
15 that time.

16 Q. What about later?

17 A. I might have talked to Agent Palomares on  
18 March 25, I think.

19 Q. March 25?

20 A. Yeah.

21 Q. Were you truthful with him?

22 A. The stuff that I might have been saying,  
23 yeah, I was. I just didn't give him everything. So  
24 yes, I was.

25 Q. You held back information?

1           A.     I held back information because I wanted  
2 to work with him. I wasn't giving him everything  
3 that I had at the time.

4           Q.     When did you decide to cooperate with the  
5 Government?

6           A.     When I found out Dan Sanchez had put a hit  
7 on me is when I decided, you know what, this gang  
8 act isn't for me, so let me turn a new leaf and go  
9 this route and try something different, you know.  
10 I've been going against the grain. Let's go with  
11 it, see how that works. And that's when I decided  
12 to work with the Government.

13          Q.     Who convinced you to flip?

14          A.     I convinced myself.

15          Q.     You didn't confer with Jerry Armenta about  
16 it?

17          A.     No.

18          Q.     And how did you take the first step? Who  
19 did you contact?

20          A.     I contacted the gang unit at PNM and told  
21 them that I wanted to join forces with them and work  
22 with them.

23          Q.     And did you want to know what was in it  
24 for you when you talked to anybody with STIU?

25          A.     No. No. I just wanted help.

1 Q. Sir?

2 A. I just wanted help. That's all. I didn't  
3 care what was in it for me.

4 Q. But on or about June 6, I believe of  
5 2016 -- pardon me, June 26 of 2015, you and Jerry  
6 Armenta were both transported to PNM. You were on  
7 the same transport, were you not?

8 A. We might have been.

9 Q. And did the two of you discuss how you  
10 were going to handle your defenses at that time or  
11 later?

12 A. I don't recall, sir. I don't remember  
13 those conversations.

14 Q. You don't remember making plans?

15 A. I don't remember those conversations, sir.

16 Q. Mr. Montoya, yesterday you testified as to  
17 receiving some benefits from the federal government,  
18 acting as a cooperating defendant, and you admit  
19 that you abused what privileges they gave you?

20 A. I didn't receive much privileges from  
21 them. It's been hard, a tough road. And whatever  
22 benefits, I've lost a lot more than I've gained by  
23 working with the Government.

24 Q. You've lost more?

25 A. Absolutely.

1 Q. What have you lost, sir?

2 A. I lost friendships, I lost security. You  
3 know, I lost my wife, lost my wedding band. My  
4 physical properties have gone lost. You know, that  
5 adds up. I've been transported here, there, to  
6 other facilities where all my things have gone lost.  
7 And all my 18 years of family photos, I can't get  
8 those back. No, I lost a lot.

9 Q. But you put yourself in this situation.

10 A. Absolutely, I knew it was going to happen.  
11 I knew it was going to happen, but it's worth it.

12 Q. How many times have you made false  
13 statements in connection with this case?

14 A. I'm not sure.

15 Q. More than once?

16 A. Yes.

17 Q. Perhaps as many as five or six, seven  
18 times?

19 A. Pertaining to the things that happened in  
20 Lovington; not the murder. I've been accurate about  
21 that, truthful when it comes to the murder.

22 Q. We'll talk about Lovington in just a  
23 minute. You developed a relationship with a  
24 correctional officer?

25 A. Yes. That's my girlfriend.

1 Q. How old is she?

2 A. She's 29 years old.

3 Q. And you manipulated her into bringing  
4 drugs and a cellphone into the institution?

5 A. I asked her, yes.

6 Q. That's what prison life is about. It's  
7 about manipulation, is it not?

8 A. I've been locked up for 18 years. I've  
9 been asking people to do things for me the whole  
10 time, my whole life. I was 19 years old, so --

11 Q. Asking? Or have you learned how to  
12 manipulate?

13 A. I ask. If they say no, it's no. If they  
14 say yes, I'm happy to receive whatever help they're  
15 willing.

16 Q. But you got her to bring drugs in to you,  
17 "her" being the officer, correctional officer, in  
18 Lea County; and then you and another inmate turned  
19 around and sold those drugs, did you not?

20 A. We did, yeah.

21 Q. So you learned how to manipulate the  
22 system? Yes or no?

23 A. No, I just asked.

24 Q. You just asked?

25 A. That's all I did. I didn't force nobody.

1 I asked. I'm not in a position to intimidate or  
2 force anybody to do anything for me.

3 Q. How much have you learned about this case  
4 through reading the tablets? You had access to all  
5 the discovery, haven't you?

6 A. I have access to discovery, the first  
7 part. The second part, my tablet fell, the screen  
8 broke, so I haven't had my tablet. So I haven't  
9 been able to view new discoveries that have been put  
10 on there, sir.

11 Q. You were aware of what kind of story Jerry  
12 Armenta was going to tell, weren't you?

13 A. Pertaining to this, no.

14 Q. Pertaining to the Molina case?

15 A. Oh, well, I would say yeah. We're  
16 co-defendants, so I know along the --

17 Q. With Timothy Martinez, too?

18 A. I never discussed like that with Timothy  
19 Martinez.

20 Q. But you read the discovery concerning  
21 Timothy Martinez, didn't you?

22 A. Yeah, but it didn't have a statement or  
23 anything that I read by Timothy Martinez.

24 Q. What about Mario Rodriguez?

25 A. No, sir.

1 Q. You haven't read any discovery about Mario  
2 Rodriguez?

3 A. No, no.

4 Q. You're the same Jerry Montoya who was  
5 convicted on March 17, 2003, in the Third Judicial  
6 District Court of Dona Ana County of possession of a  
7 controlled substance, a felony narcotic drug; is  
8 that correct?

9 A. Yes, sir.

10 Q. And on February 18, 2008, in Santa Fe,  
11 First Judicial District Court, criminal  
12 solicitation?

13 A. Yes.

14 Q. You know that your criminal history  
15 becomes relevant at the time of sentencing, yes?

16 A. Yes, sir. I don't have much of a criminal  
17 history.

18 Q. And what is it you expect to gain from the  
19 Court and the Government by testifying here today?

20 A. I don't expect to gain anything. I'm just  
21 here to tell the truth. And whatever consequences I  
22 have coming, that's what I'm facing; that's it.

23 Q. Mr. Montoya, you hope to gain something  
24 from it, don't you?

25 A. I don't hope to gain anything. I'm just



1 here doing the right thing and telling the truth,  
2 letting everything be known, everyone's roles. And  
3 that's it. You know what I mean?

4 Q. And do you expect the jury to believe  
5 everything you've told them here today?

6 A. I'm being truthful. Whether they believe  
7 me, that's for them to decide, sir. I'm just here  
8 letting it be known what I know, what I experienced,  
9 and that's it. I don't make their mind up.

10 MR. JEWKES: If I may have a moment with  
11 co-counsel, Your Honor?

12 THE COURT: You may.

13 MR. JEWKES: If I may approach counsel for  
14 the Government?

15 THE COURT: You may.

16 MR. JEWKES: If we could mark these, Your  
17 Honor.

18 Your Honor, we would tender into evidence  
19 Defendants' Exhibits FI and FJ, identified as  
20 judgments and sentences.

21 MR. BECK: No objection, Your Honor.

22 THE COURT: Any objection from any of the  
23 other defendants?

24 Not hearing any objection, Defendants' FJ  
25 and FI will be admitted into evidence.

1 (Defendants' Exhibit FJ and FI admitted.)

2 MR. JEWKES: Pass the witness.

3 THE COURT: Thank you, Mr. Jewkes.

4 Ms. Duncan.

5 MS. DUNCAN: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. DUNCAN:

8 Q. Good morning.

9 A. Good morning, ma'am.

10 Q. I'd like to follow up on some of the  
11 questions that Mr. Jewkes just asked you. First,  
12 Mr. Jewkes asked you if Mario Rodriguez had stomped  
13 on Javier Molina; correct?

14 A. Yes.

15 Q. And you indicated he had not?

16 A. No, that was not him.

17 Q. It was Timothy Martinez; correct?

18 A. Yes.

19 Q. And Timothy Martinez stomped on Javier  
20 Molina's face three times; correct?

21 A. Yes.

22 Q. While Javier Molina was lying on the  
23 ground?

24 A. He did, ma'am.

25 Q. Mr. Jewkes also asked you about your 2001

1 conviction for murder, and you indicated that you  
2 were 19 years old at the time; correct?

3 A. When the crime happened, I was like 19, 20  
4 years old, yes, ma'am.

5 Q. Your victim was 17; correct?

6 A. We were teenagers, yes.

7 Q. But your victim was 17 years old?

8 A. I think so.

9 Q. And you indicated that it was  
10 gang-related?

11 A. It was, ma'am.

12 Q. Are you aware that his family disputes  
13 that, your victim's?

14 A. I'm not aware of that, no.

15 Q. So you shot into a party; correct?

16 A. Me and someone else, we both shot in the  
17 party, yes.

18 Q. So you were convicted, I believe, of four  
19 offenses related to that shooting; correct?

20 A. Yes, ma'am.

21 Q. You were convicted of murder in the second  
22 degree?

23 A. Yes, ma'am.

24 Q. Conspiracy to commit first-degree murder;  
25 correct?

1 A. Correct.

2 Q. And aggravated battery with great bodily  
3 harm?

4 A. Yes.

5 Q. And shooting at a dwelling?

6 A. Yes.

7 Q. And at the time you shot -- and your  
8 victim's name was Gary Pennington; correct?

9 A. Yes.

10 Q. At the time that you shot Gary, there were  
11 other people at that party; correct?

12 A. Yes.

13 Q. You also testified that you were convicted  
14 in 2008 for solicitation to bring contraband into  
15 prison; correct?

16 A. Yes.

17 Q. You have one additional conviction for  
18 possession of drugs; correct?

19 A. In prison?

20 Q. Possession of drugs. In 2003 you were  
21 also convicted of possession of a controlled  
22 substance?

23 A. I couldn't hear you, ma'am.

24 Q. In 2003, you were convicted of possession  
25 of a controlled substance; correct?

1 A. Yes, ma'am.

2 Q. So you have two convictions for possession  
3 of a controlled substance?

4 A. Solicitation. I never had control of it.

5 Q. But in 2003, it wasn't solicitation; you  
6 were convicted of possession of a controlled  
7 substance; correct?

8 A. Yes.

9 Q. I think yesterday when Mr. Beck was  
10 questioning you, he asked you about crimes you  
11 committed on behalf of the SNM; correct?

12 A. Yes.

13 Q. And one of the crimes that you said you  
14 committed on behalf of the SNM was the 2008  
15 possession or solicitation to distribute the  
16 controlled substance into a prison; correct?

17 A. Yes, ma'am.

18 Q. But before -- you were a drug dealer  
19 before you joined the SNM; correct?

20 A. I sold drugs.

21 Q. And you were a drug dealer while you say  
22 you were a member of the SNM; correct?

23 A. Yeah.

24 Q. And you continued to sell drugs after you  
25 allegedly left the SNM; correct?

1 A. Yes.

2 Q. You also testified yesterday that you, on  
3 behalf of the SNM -- let me have a second -- that  
4 you assaulted an inmate named Nestor Caraveo;  
5 correct?

6 A. Yes.

7 Q. I'm sorry, can you spell Mr. Caraveo's  
8 last name?

9 A. I can't spell it.

10 Q. And you said that the SNM hadn't ordered  
11 it, but you did it because you knew it was expected  
12 of you; correct?

13 A. He was from a rival gang.

14 Q. That's not really why you assaulted Mr.  
15 Caraveo, is it?

16 A. That's -- well, it played a part in it.

17 Q. That's right. Because Mr. Caraveo was a  
18 co-defendant in your 2000 case for shooting?

19 A. Oh, yeah.

20 Q. And you knew that he had made a statement  
21 against you to law enforcement?

22 A. Yes.

23 Q. And in fact, you had previously threatened  
24 to kill Mr. Caraveo for making that statement  
25 against you?

1 A. No.

2 Q. And you provided paperwork regarding Mr.  
3 Caraveo's statement to another inmate --

4 A. Yes.

5 Q. -- with the intention that that inmate  
6 would hit Mr. Caraveo?

7 A. With the intent that word would get  
8 around.

9 Q. That Mr. Caraveo had testified or provided  
10 a statement against you?

11 A. That's what happens in prison.

12 Q. Right. And you provided that paperwork in  
13 the hope that someone would injure him for having  
14 made a statement against you?

15 A. That's what happens in prison.

16 Q. I'm not asking what happened in prison.  
17 I'm asking what you intended.

18 A. I'm sorry, ma'am.

19 Q. You intended for someone to hurt him  
20 because he had made a statement against you?

21 A. Yes, ma'am.

22 Q. And do you know, was Mr. Caraveo assaulted  
23 based on you passing the paperwork?

24 A. Excuse me.

25 Q. Do you know if Mr. Caraveo was assaulted

1 based on you providing others with that paperwork?

2 A. I don't know if he ever was. No, I don't  
3 know.

4 Q. Now, you also testified about the  
5 statement Mr. Armenta gave you that potentially  
6 exculpated you; correct?

7 A. Yes.

8 Q. That was Government's Exhibit 756?

9 A. The letter?

10 Q. Yes.

11 A. Yes, ma'am.

12 Q. And you've testified that you did not ask  
13 Mr. Armenta to write that letter for you; correct?

14 A. Yes.

15 Q. But you did provide it to your attorney?

16 A. Absolutely, ma'am.

17 Q. And you had told your attorney that it was  
18 true?

19 A. I did. It was my way out.

20 Q. And provided it to your attorney with the  
21 intent that he provide it to the Court; correct?

22 A. Yes.

23 Q. I'd like to show you what we've marked as  
24 Defendants' Exhibit FG.

25 MS. DUNCAN: May have a minute, Your



1 Honor?

2 Your Honor, may I approach?

3 THE COURT: You may.

4 BY MS. DUNCAN:

5 Q. I'm showing you what we've marked as FG.

6 Do you recognize this document?

7 A. I'm aware of that, ma'am.

8 Q. And is that a document that you wrote?

9 A. Yes, that's my...

10 MS. DUNCAN: Your Honor, at this time the  
11 defense would move the admission of Defendants' FG.

12 THE COURT: Any objection, Mr. Beck?

13 MR. BECK: No objection, Your Honor.

14 THE COURT: Any defendant have any  
15 objection?

16 Not hearing any objection, Defendants'  
17 Exhibit FG will be admitted into evidence.

18 (Defendants' Exhibit FG admitted.)

19 BY MS. DUNCAN:

20 Q. I'm showing you what's been admitted as  
21 Defendants' Exhibit FG, and I think you testified  
22 you recognized it?

23 A. I do, ma'am.

24 Q. What is this?

25 A. This is a letter I wrote to my first

1 attorney who was representing me in the murder case.

2 Q. I'd like to direct you to paragraph 4 of  
3 this letter. Do you see that here?

4 A. Yes.

5 Q. And can you read to us what that paragraph  
6 says?

7 A. "I have a written confession from Jerry  
8 Armenta to give to you, the judge, and the DA. I  
9 don't want to mail it. I want to hand it directly  
10 to you. Mary, Jerry Armenta, Timothy Martinez, and  
11 Jason Wright need to be interviewed by you and our  
12 investigator as soon as possible so we could start  
13 building our defense to defend me."

14 Q. Let me stop you right there.

15 A. Yes.

16 Q. So you're asking -- Mary is your attorney?  
17 Mary McMahon was the attorney; is that correct?

18 A. Yes, it was.

19 Q. So you're asking her to interview Jerry  
20 Armenta; correct?

21 A. I am, ma'am.

22 Q. Because you're expecting Jerry Armenta to  
23 say that you had nothing to do with the Javier  
24 Molina murder; correct?

25 A. What he wrote on the letter, that's what I

1 expected him to say, yes.

2 Q. Which is that you had nothing to do with  
3 the Javier Molina murder?

4 A. Essentially, yes, ma'am.

5 Q. And now, according to your testimony in  
6 court today, that's false?

7 A. Yes, it is false.

8 Q. You also asked your attorney to interview  
9 Timothy Martinez; correct?

10 A. Yes, ma'am.

11 Q. And you expected at that time that Timothy  
12 Martinez would testify that you had nothing to do  
13 with the Javier Molina murder; correct?

14 A. I expected that, yes.

15 Q. And according to your testimony today,  
16 that was false?

17 A. That was false.

18 Q. You understand it's a crime to present  
19 false testimony in court?

20 A. At the time I didn't know that. I was  
21 naive to the judicial system.

22 Q. You understand that now?

23 A. I understand that fully now.

24 Q. I mean, you understand it's wrong to tell  
25 a lie; correct?

1 A. Yes, I do know, ma'am.

2 Q. Even before you knew what perjury is, you  
3 knew it was wrong to present false evidence to the  
4 Court; correct?

5 A. I didn't know it was a crime to do that.

6 Q. That's not what I asked you. I asked you,  
7 did you know it was wrong to present false evidence  
8 to a Court?

9 A. I understand it's false -- wrong to do  
10 that, yes.

11 Q. You also asked your attorney to interview  
12 Jason Wright; correct?

13 A. Yes.

14 Q. And you expected Jason Wright to provide  
15 testimony that you were not involved in the murder  
16 of Javier Molina; correct?

17 A. Yes.

18 Q. Okay. If you could continue reading.

19 A. Okay. "The interviews are critical and  
20 need to be done. And this confession letter needs  
21 to be in your hands rather than mine. It's  
22 something for you to work with. Also, I send you a  
23 prison report that belongs to Mario Rodriguez."

24 Q. I want to stop you. Sorry, Mr. Montoya.  
25 What are you talking about in that sentence?

1 A. I'm talking about a disciplinary report  
2 that we received in prison.

3 Q. It was a report that belonged to Mario  
4 Rodriguez?

5 A. Yes.

6 Q. Okay. Could you continue?

7 A. "I need for you to mail it back to me ASAP  
8 because he needs it back to give to his lawyer to  
9 fight his case. Mario has been asking me for it, so  
10 please send it back to me. Make us a copy for our  
11 case, just in case. Thank you, Ms. McMahon."

12 Q. We'll stop there. Thank you.

13 So when you sent your attorney that  
14 letter, you expected her to rely on it; correct?

15 A. Yes.

16 Q. And to file it with the Court?

17 A. That's what I expected, ma'am.

18 Q. And in fact, she did file it with the  
19 Court; correct?

20 A. Yeah, I think so.

21 Q. She filed it when she asked the Court to  
22 give Mr. Armenta immunity to testify on your behalf;  
23 correct?

24 A. Yes, sir.

25 Q. So he could testify for you without being

1 subjected to prosecution for what he said; correct?

2 A. Yes, ma'am.

3 Q. And she filed that document with the Court  
4 like this one; correct?

5 A. Yes, ma'am.

6 Q. And the Court granted that motion to give  
7 Mr. Armenta immunity?

8 A. Yes.

9 Q. And the Court granted that motion based on  
10 the false statement that you presented through your  
11 attorney; correct?

12 A. That's true.

13 Q. And Mr. Armenta's -- according to your  
14 testimony now, Mr. Armenta's statement was not the  
15 only false statement that you presented to that  
16 Court; correct?

17 A. True.

18 Q. You also presented false statements by  
19 Timothy Martinez?

20 A. He wrote me a statement, as well.

21 Q. And when did Mr. Timothy Martinez write  
22 you that statement?

23 A. Sometime after Jerry Armenta's statement.

24 Q. Do you recall Mr. Martinez writing you a  
25 statement in September of 2014?

1 A. I remember him writing a statement for me.

2 Q. And do you recall that Mr. Armenta wrote  
3 his statement in January of 2015?

4 A. January, yes.

5 Q. So you would agree with me, would you not,  
6 that September 2014 comes before January 2015?

7 A. It might have been dated wrong, but as far  
8 as I know, as far as I can remember, ma'am, Timothy  
9 wrote me a letter afterwards.

10 Q. If I show you that letter, might it  
11 refresh your recollection on the date?

12 A. Yes, ma'am.

13 MS. DUNCAN;: May I approach?

14 THE COURT: You may.

15 MS. DUNCAN: Let's mark this as defense  
16 next in order, just for the record. FK, as in Kate.

17 May I approach, Your Honor?

18 THE COURT: You may.

19 BY MS. DUNCAN:

20 Q. Mr. Montoya, can you look at this and tell  
21 me if you recognize it?

22 A. Yes, ma'am.

23 Q. Does that refresh your recollection of  
24 when Mr. Martinez gave you the statement?

25 A. I remember the letter. I just didn't

1 remember the date, ma'am.

2 Q. And the date that he signed the statement  
3 was November 3, 2014; correct?

4 A. Yes, ma'am.

5 Q. And that's before January 2015?

6 A. Yes.

7 Q. And again, did you provide this letter to  
8 your attorney?

9 A. I must have.

10 Q. And you forwarded it to your attorney to  
11 give to the Court; correct?

12 A. I must have, ma'am.

13 Q. And you know that your attorney did, in  
14 fact, forward it to the Court?

15 A. I wasn't aware of that.

16 MS. DUNCAN: If I can approach again with  
17 Defendants' FK?

18 THE COURT: You may.

19 A. Did they forward this to the Court?

20 BY MS. DUNCAN:

21 Q. I'm asking you to look at that document.  
22 Is that a pleading that was filed in your case in  
23 the state court proceeding?

24 A. Yeah, yes.

25 Q. So the statement was filed in court;



1 correct?

2 A. It was filed, ma'am, yes.

3 Q. And your attorney also forwarded a  
4 statement from Mr. Martinez in order to obtain  
5 immunity for him to testify in your case; correct?

6 A. Yeah.

7 Q. And that was a separate statement;  
8 correct?

9 A. Yes.

10 Q. And at the time you told your attorney  
11 that that was true?

12 A. Um-hum.

13 Q. And your attorney relied on your  
14 representation in filing it with the Court; correct?

15 A. Yes, ma'am.

16 Q. And based on that representation, the  
17 Court gave Mr. Martinez immunity; correct?

18 A. Yes, just to testify.

19 Q. But that was based on your representation  
20 that the information provided in Mr. Martinez'  
21 statement was true?

22 A. Yes, it was.

23 Q. Finally, you also submitted to the Court  
24 through your attorney a statement by Mario  
25 Rodriguez; correct?

1           A.     I'm not sure. Could you put it up so I  
2 could see it? I'm not sure about Mario.

3           MS. DUNCAN: Your Honor, if I could mark  
4 this Defendants' Exhibit FL.

5           If I can approach, Your Honor?

6           THE COURT: You may.

7 BY MS. DUNCAN:

8           Q.     I'm showing you what's been marked as  
9 Defendants' Exhibit FL.

10          A.     Yes, ma'am. Yeah, they didn't grant that.  
11 I remember writing it. They didn't let that in.

12          Q.     You provided this statement from Mario  
13 Rodriguez to your lawyer?

14          A.     Yes, ma'am.

15          Q.     And you represented to your lawyer that it  
16 was true?

17          A.     I did.

18          Q.     And based on your testimony today, you're  
19 saying it wasn't true; correct?

20          A.     That statement is not true on Mario.

21          Q.     Mr. Rodriguez was saying you had nothing  
22 to do with the statement of Javier Molina?

23          A.     Yeah.

24          Q.     And based on your representation to your  
25 attorney, your attorney submitted it to the Court?

1 A. Yeah.

2 Q. Filed in the court. And in this case the  
3 Court did not grant Mr. Rodriguez --

4 A. They did not grant his letter in, no.

5 Q. It's not that they didn't admit the  
6 letter; it's that they didn't grant him immunity to  
7 testify at your trial; correct?

8 A. I remember the judge saying that he didn't  
9 want to let that letter in. They just let Timothy  
10 Martinez's in, along with Armenta's, and not that  
11 one. For whatever reason, I'm not sure. But that's  
12 what I had heard.

13 Q. Let me show you --

14 MS. DUNCAN: May I just have a moment,  
15 Your Honor?

16 THE COURT: Certainly.

17 MS. DUNCAN: I'm just marking for  
18 identification purposes Defendants' Exhibit FM. May  
19 I approach, Your Honor?

20 THE COURT: You may.

21 BY MS. DUNCAN:

22 Q. I'm showing what you I've marked as  
23 Defendants' Exhibit FM. Do you recognize this, Mr.  
24 Montoya?

25 A. There's been so many documents. I guess.

1 Q. Take the time to read it.

2 A. Okay, yes.

3 Q. And so the Court granted Jerry Armenta  
4 immunity to testify at your trial; correct?

5 A. They did.

6 Q. Based on your attorney's application;  
7 correct?

8 A. Yes, the letter that I had written.

9 Q. But denied immunity to Mario Rodriguez;  
10 correct?

11 A. Yes. I don't know why.

12 Q. And if I tell you that the letter Mr.  
13 Rodriguez submitted on your behalf is still a part  
14 of the court record, would you have a reason to  
15 think that I was not telling the truth?

16 A. It's there, so I figure it's true.

17 Q. And how did you get that statement from  
18 Mr. Rodriguez?

19 A. He gave it to me.

20 Q. Where were you when he gave it to you?

21 A. Maybe at the North, ma'am, PNM.

22 Q. Did you discuss the statement with Mr.  
23 Rodriguez before he gave it to you?

24 A. I don't recall.

25 Q. Did you discuss Mr. Martinez' statement

1 before he gave it to you?

2 A. I don't recall that either.

3 Q. Now, these statements, these written  
4 statements that they provided for you, is not the  
5 first time you asked them to lie for you; correct?

6 A. I'm not sure.

7 Q. You had a disciplinary hearing in April of  
8 2014; correct?

9 A. Yes, after the crime we all faced a  
10 disciplinary.

11 Q. And you asked the hearing officer to call  
12 Jerry Armenta as a witness for you; correct?

13 A. Yes, ma'am.

14 Q. And you asked the hearing officer to ask  
15 Mr. Armenta two questions: One, did you see Inmate  
16 Montoya assault Inmate Molina? And two, did you see  
17 Inmate Montoya with a shank; correct?

18 A. Yes.

19 Q. And when you asked the hearing officer to  
20 ask Mr. Armenta those two questions, you expected  
21 that he would answer both no.

22 A. Yes.

23 Q. And based on your testimony in front of  
24 the jury, that was a lie?

25 A. Yeah, I didn't want to get caught for it,

1 so...

2 Q. So you asked Mr. Armenta to lie for you?

3 A. Yes.

4 Q. Is that a yes?

5 A. Yes.

6 Q. You also asked the hearing officer to call  
7 Timothy Martinez as a witness; correct?

8 A. Yes, ma'am.

9 Q. And for the hearing officer to ask  
10 Mr. Martinez the same two questions?

11 A. Yes, ma'am.

12 Q. And you expected him to give the same two  
13 answers, "No"?

14 A. I expected them, yes.

15 Q. And in fact, Mr. Armenta answered both  
16 questions "No," to the hearing officer; correct?

17 A. Yes.

18 Q. And Mr. Martinez answered "No" to the  
19 question: Did you see Inmate Montoya assault Inmate  
20 Molina; correct?

21 A. Yes, ma'am.

22 Q. And he answered, "Don't know" to if he saw  
23 you with a shank; correct?

24 A. That's what it says, at that time.

25 Q. So you've testified a little bit about

1 your prior criminal conduct, and I would like to  
2 talk to you some more about the misconduct at the  
3 Lea County Correctional Facility.

4 A. Okay.

5 Q. Mr. Beck asked you about that conduct  
6 during your direct testimony; correct?

7 A. He did, ma'am.

8 Q. And you told him that you did not notify  
9 the Government of that misconduct until the jig was  
10 up?

11 A. True.

12 Q. You had been caught for that misconduct by  
13 that time?

14 A. I had not been caught.

15 Q. You were aware that they had evidence that  
16 you had a cellphone; correct?

17 A. Yes.

18 Q. And when you told Mr. Beck that you did  
19 not, the cellphone wasn't yours, that was about a  
20 week before this trial started; correct?

21 A. Yes.

22 Q. On January 22 of 2018?

23 A. Yes, ma'am.

24 Q. And you told him that the cellphone  
25 belonged to your cell mate, Richard Gallegos?

1 A. It was both of ours.

2 Q. You didn't tell him that.

3 A. I'm sorry.

4 Q. You told him that it was Richard  
5 Gallegos'; correct?

6 A. Yes. I said that, yes.

7 Q. And you told Mr. Beck that Mr. Gallegos  
8 got the cellphone from a homie named Pate; correct?

9 A. Yes.

10 Q. And that was not true?

11 A. That was not true.

12 Q. Actually, the cellphone was brought in by  
13 your girlfriend, Amelia Alvarado; correct?

14 A. Yes.

15 Q. And Ms. Alvarado also brought in Suboxone  
16 on your behalf, correct, into the correction  
17 facility?

18 A. Yes, ma'am, she did.

19 Q. A cellphone is considered contraband  
20 inside a prison; correct?

21 A. I would think so, ma'am.

22 Q. So it's a crime to bring a cellphone into  
23 a prison; correct?

24 A. Yes, ma'am.

25 Q. And it's also a crime to bring Suboxone



1 into a prison?

2 A. Yes.

3 Q. You also testified you had sex with  
4 Ms. Alvarado on three occasions; correct?

5 A. Yes.

6 Q. And at the time she was a correctional  
7 officer?

8 A. She was.

9 Q. And you're aware it's a crime for a  
10 correctional officer to have sexual intercourse with  
11 an inmate; correct?

12 A. I was aware.

13 Q. And you conspired with Ms. Alvarado to  
14 commit these crimes; correct?

15 A. We talked about it, and that's conspiring,  
16 yes.

17 Q. You agreed with Ms. Alvarado for her to  
18 bring Suboxone into a prison; correct?

19 A. Yes, ma'am.

20 Q. And you agreed for her to bring a  
21 cellphone into a prison?

22 A. I asked her and she brought it.

23 Q. At the time that you asked her and she  
24 brought it, you were aware she has three young  
25 children?

1 A. Yes, ma'am.

2 Q. And you asked a woman with three young  
3 children to commit criminal offenses with you;  
4 correct?

5 A. Yes, ma'am.

6 Q. How old are Ms. Alvarado's children?

7 A. 13, 9 and 2.

8 Q. And you're aware that Ms. Alvarado may  
9 face criminal consequences?

10 A. Oh, absolutely. We both are facing  
11 criminal charges. We're not -- we're not escaped  
12 from this at all. We're going to face the music.  
13 So I already know. That's a given.

14 Q. You know Ms. Alvarado denied that you were  
15 involved in any of these crimes; correct?

16 A. Yes.

17 Q. Right. Ms. Fox-Young asked you if  
18 Ms. Alvarado was pregnant based on your sexual  
19 encounters with her; correct?

20 A. Yes, ma'am.

21 Q. And you said no?

22 A. I believe she's not.

23 Q. And you denied that you previously said  
24 she was pregnant; correct?

25 A. I denied that -- I denied what?

1 Q. That you had previously said she was  
2 pregnant.

3 A. I didn't say that to anybody. I don't  
4 remember saying that to nobody. I'm sorry, I don't  
5 remember.

6 Q. Do you recall writing letters to  
7 Ms. Alvarado while you were in detention?

8 A. Yes, ma'am.

9 Q. And in those letters, you talked to  
10 Ms. Alvarado about being pregnant; correct?

11 A. I wanted her to have my baby. I remember  
12 saying that, I wrote that. I didn't know if she was  
13 pregnant or not.

14 MS. DUNCAN: I'd like to mark this exhibit  
15 as defense next in order, which is Defendants' FN.

16 Q. Mr. Montoya, I'm going to show you what's  
17 been marked as Defendants' Exhibit FN.

18 MS. DUNCAN: May I approach, Your Honor?

19 THE COURT: You may.

20 A. What do you want me to do?

21 BY MS. DUNCAN:

22 Q. I want you to review it and tell me if you  
23 recognize it.

24 A. Yes.

25 Q. Is that a letter that you wrote to Ms.

1 Alvarado?

2 A. Yes.

3 Q. And other than the highlighting that you  
4 see on this exhibit, does this look like a true and  
5 correct copy of that letter?

6 A. Yes.

7 MS. DUNCAN: Your Honor, I'd move the  
8 admission of Defendants' Exhibit FN?

9 THE COURT: Any objection, Mr. Beck?

10 MR. BECK: Yes, Your Honor. I object as  
11 hearsay.

12 THE COURT: Let me see the letter up here.

13 (The following proceedings were held at  
14 the bench.)

15 MR. JEWKES: What is the exhibit?

16 THE COURT: Well, you're just offering it  
17 for impeachment purposes; right?

18 MS. DUNCAN: I am, Your Honor, but I would  
19 like to publish it to the jury. If I can publish  
20 it, I don't need to have it in evidence.

21 THE COURT: Any problem with showing the  
22 statements to the jury that you wrote here for  
23 impeachment purposes?

24 MR. BECK: Yeah, I think she can read them  
25 to them. Don't show it to the jury.

1 THE COURT: Just read that to them.  
2 Traditional impeachment on this.

3 MS. DUNCAN: Okay.

4 (The following proceedings were held in  
5 open court.)

6 THE COURT: Ms. Duncan.

7 BY MS. DUNCAN:

8 Q. Mr. Montoya, this letter is dated January  
9 2, 2018; correct?

10 A. It's dated that, yes, ma'am.

11 Q. And this is a letter that you wrote to Ms.  
12 Alvarado; correct?

13 A. It's a letter I wrote, yes.

14 Q. And she's the correctional officer with  
15 whom you had sex while in custody?

16 A. Yes.

17 Q. And you wrote to Ms. Alvarado, "Look at us  
18 now, we're pregnant"; correct?

19 A. Yes.

20 Q. And you say, "Can't put into words or  
21 describe how lucky and fortunate I feel. Head over  
22 heels in love with you. You are my forever. Now to  
23 find out that you're going to have my child just  
24 made us official eternal"; correct? You wrote that  
25 to her?

1 A. Yes, I did.

2 Q. You wrote, "Babe, I just want to get out  
3 and complete you, be a good husband to you, father  
4 figure and daddy to our little bundle of joy";  
5 correct?

6 A. That's what I want.

7 Q. And you wrote that?

8 A. Excuse me?

9 Q. You wrote that; correct --

10 A. Yes, ma'am, I did.

11 Q. -- to Ms. Alvarado? And you wrote, "I  
12 can't wait to take pictures, kiss your panza, and  
13 for you to start showing." You wrote that?

14 A. I wrote that.

15 Q. And panza means stomach?

16 A. Yes.

17 Q. And so you're aware that Ms. Alvarado has  
18 also made statements that she's pregnant?

19 A. I'm aware of that, but I don't think she's  
20 pregnant no more.

21 Q. So you have previously said she was  
22 pregnant; correct?

23 A. From that letter, I wrote that, yes.

24 MS. DUNCAN: May I have a moment, Your  
25 Honor?

1 THE COURT: Certainly.

2 BY MS. DUNCAN:

3 Q. Mr. Jewkes asked you about some prior  
4 statements that you made to law enforcement. I'd  
5 like to go through those with you.

6 A. Okay.

7 Q. The first statement you made was March 8  
8 of 2014 to Agent Palomares; correct?

9 A. I don't recall giving them a statement,  
10 ma'am.

11 Q. Do you recall talking to them?

12 A. I remember them -- saying I don't want to  
13 talk to them, and I opted out to talk to Holguin.

14 Q. Do you recall Agent Alvarado asking you:  
15 "Where were you when all this commotion -- when you  
16 noticed all this going on, where were you at?"

17 And you answering, "In the day room"?

18 A. I don't remember the conversation, ma'am;  
19 I'm sorry.

20 Q. If I showed you a transcript of that  
21 conversation, might it refresh your memory?

22 A. We could try.

23 MS. DUNCAN: Your Honor, may I approach?

24 THE COURT: You may.

25 A. Ma'am, are you asking me to look over the

1 highlighted parts?

2 BY MS. DUNCAN:

3 Q. Just on that page.

4 A. Okay. I'm done.

5 Q. To see if it refreshes your recollection.

6 A. I'm done.

7 Q. Does that refresh your recollection of  
8 what you told Agent Palomares?

9 A. It's there, ma'am.

10 Q. And after making that statement, you then  
11 declined to answer any further questions; correct?

12 A. Yes, ma'am.

13 Q. And you told Agent Palomares that you were  
14 still trying to figure out what happened your damn  
15 self; right?

16 A. Yes, ma'am.

17 Q. And the agents confronted you with the  
18 fact that they had a video of the incident; correct?

19 A. Yes, ma'am.

20 Q. And that they saw you on that video?

21 A. I guess so.

22 Q. I can show you. Can I show you --

23 A. No, no, no. I see myself on the video,  
24 ma'am, yes.

25 Q. And they told you they had seen you on the



1 video?

2 A. Yes, ma'am.

3 Q. So after that interview is when you talked  
4 to Agent Holguin; correct?

5 A. Yes.

6 Q. And you told Agent Holguin that you didn't  
7 know anything; correct?

8 A. Yes.

9 Q. And Agent Holguin had another officer  
10 describe what you were wearing and doing on the  
11 video of the Molina murder; correct?

12 A. I don't remember verbatim what had  
13 happened.

14 Q. Do you remember them telling you that they  
15 saw you on the video?

16 A. Holguin?

17 Q. Yes, Holguin and Maldonado.

18 A. My memory is real vague about that  
19 interview, ma'am. There was a lot of moving parts  
20 at that time. I just --

21 Q. If I were to show you a report of that  
22 interview, might it refresh your recollection?

23 A. You don't have to show me, ma'am.

24 Q. I'm only going to show you if you think it  
25 might help you remember the conversation that you

1 had with the agents?

2 A. Like I said, my memory is vague about that  
3 time. It's been a long time since that happened,  
4 ma'am.

5 Q. Do you remember admitting to Agent Holguin  
6 that it might have been you on the video?

7 A. Possibly, ma'am, yes.

8 Q. Then I think you had a follow-up interview  
9 with Agent Holguin on March 10th, 2014; correct?

10 A. Yes.

11 Q. And then you said you had an interview.  
12 Let me ask you a few more questions about that.

13 A. Okay.

14 Q. You told Agent -- or yeah, you told  
15 Officer Holguin that you wanted him to be present  
16 during the interview with the State Police; correct?

17 A. That was on March 8, I think, ma'am.

18 MS. DUNCAN: Your Honor, may I approach?

19 THE COURT: You may.

20 BY MS. DUNCAN:

21 Q. It's Bates No. 12960.

22 MS. DUNCAN: May approach, Your Honor?

23 Q. I'm showing you the report of Officer  
24 Holguin. Would you look at this bottom paragraph?

25 A. Okay. Yes.

1 Q. That was on March 10th, 2014?

2 A. Yes, ma'am.

3 Q. And you told Officer Holguin that you  
4 would only talk to him about what you wanted;  
5 correct?

6 A. I think so.

7 Q. What you wanted at the time was a deal;  
8 correct?

9 A. I didn't talk to him about a deal at that  
10 time.

11 Q. I'm asking what you wanted at that time.  
12 At that time you wanted to make a deal; correct?

13 A. No.

14 Q. In March of 2014, you did not want to make  
15 a deal with the State?

16 A. I don't remember talking to him about a  
17 deal, ma'am.

18 Q. I'm not asking what you talked about. I'm  
19 asking you if, in March of 2014, you were interested  
20 in making a deal with the State.

21 A. Yes.

22 Q. Then you were interviewed later in March  
23 by Agent Palomares; correct?

24 A. I think on the 25th, ma'am?

25 Q. 25th of March 2014.

1 A. Yes, ma'am.

2 Q. And during that interview, you asked Agent  
3 Palomares if he had talked to the district attorney;  
4 correct?

5 A. Yes, ma'am.

6 Q. And you wanted to know if he had talked to  
7 the district attorney because you wanted to get a  
8 deal?

9 A. Yes.

10 Q. You told the agents that you felt you had  
11 a lot to offer; correct?

12 A. At that time I thought that, yes.

13 Q. And you told Agent Palomares that you just  
14 wanted to try it out and see if, you know, if it  
15 works, you know, telling the truth, if it goes  
16 anywhere; correct?

17 A. Yes, I've been going against the grain  
18 this whole time. It was not working for me.

19 Q. And if it goes anywhere, you were hoping  
20 to get a deal; correct?

21 A. At that time, yes.

22 Q. If you told them you were going to lie to  
23 them, they weren't going to give you a deal;  
24 correct?

25 A. If I lied to them, no, they would not give

1 me a deal.

2 Q. If you told them you were going to lie,  
3 they wouldn't give you the deal; correct?

4 A. If I told them I was going to lie, they  
5 wouldn't give me a deal.

6 Q. You had to tell them you would tell the  
7 truth?

8 A. Absolutely.

9 Q. So when you testified that you decided  
10 in -- after you -- well, you testified when you're  
11 speaking to Mr. Jewkes, that you decided to  
12 cooperate after you'd been charged in the federal  
13 case; correct?

14 A. Yes.

15 Q. You actually decided to cooperate back in  
16 March of 2014?

17 A. I didn't cooperate. I would have did it  
18 then. They came and offered me a deal twice, which  
19 I declined, my loyalties. I was conflicted. My  
20 loyalties were still with the SNM. I declined the  
21 offer that I was seeking --

22 Q. You told agents in March of 2014 that you  
23 wanted to cooperate; correct?

24 A. I told them that. When they came with  
25 it --

1 Q. You've answered my question.

2 A. Oh, I'm sorry, ma'am. Yes.

3 Q. Thank you. Do you recall talking to Mario  
4 Rodriguez about his prior conviction for criminal  
5 sexual penetration?

6 A. I don't remember talking about it. But he  
7 would clown and make fun of his charge lightly, that  
8 he had that charge.

9 Q. Mr. Rodriguez told you that the victim of  
10 that rape was a sex offender; correct?

11 A. I had heard, yes, ma'am.

12 Q. Mr. Rodriguez told you that; correct?

13 A. I don't remember him specifically telling  
14 me that. I had heard through prison gossip that  
15 that person that he did that to was a sex offender,  
16 a rapist, whatever, somewhere along those lines.

17 THE COURT: Ms. Duncan, would this be a  
18 good time for us to take our morning break?

19 MS. DUNCAN: It would, Your Honor.

20 THE COURT: Let's be in recess for about  
21 15 minutes. All rise.

22 (The jury left the courtroom.)

23 THE COURT: All right. We'll be in recess  
24 for about 15 minutes.

25 (The Court stood in recess.)

1 THE COURT: All right. We'll go on the  
2 record. Anybody need to discuss anything from the  
3 Government?

4 MR. CASTELLANO: No, sir.

5 THE COURT: How about from the defense  
6 side? Anybody got anything?

7 MS. FOX-YOUNG: No, Your Honor, for Mr.  
8 Perez.

9 THE COURT: All right.

10 (The jury entered the courtroom.)

11 THE COURT: All right. My clerk ran the  
12 prescription to Walgreen's, but they couldn't fill  
13 it immediately. He's going to run back at 10:30.  
14 It should be here soon. I appreciate the patience  
15 of everybody hanging in there and working hard.

16 All right, Mr. Montoya, I'll remind you  
17 you're still under oath.

18 THE WITNESS: Yes, sir.

19 THE COURT: Ms. Duncan, if you wish to  
20 continue your cross-examination of Mr. Montoya, you  
21 may do so at this time.

22 MS. DUNCAN: Thank you, Your Honor.

23 BY MS. DUNCAN:

24 Q. So before the break, we were talking about  
25 Mario Rodriguez' claim that the man he raped with a

1 hot sauce bottle was a sex offender. Do you  
2 remember that?

3 A. I do, ma'am.

4 Q. And you said that it was sort of around  
5 the prison that that was true, but you couldn't  
6 remember if it was Mario Rodriguez who said it. Is  
7 that fair?

8 A. That's fair.

9 Q. Do you remember meeting with the  
10 Government, so the people at this table, in January  
11 of 2017?

12 A. Yes, ma'am.

13 Q. That was your first debrief with them when  
14 you agreed to cooperate?

15 A. It was.

16 Q. And do you remember discussing  
17 Mr. Rodriguez' crime with the agents?

18 A. It had come up. There was not too much  
19 detail, but it had come up.

20 Q. And you told the Government that Mario  
21 Rodriguez had explained that he had shoved a hot  
22 sauce bottle up a sex offender's ass; correct?

23 A. He didn't explain like that to me. It was  
24 just prison gossip. But that's what was explained  
25 to me, yes, ma'am.



1 Q. So if Agent Acee wrote that you had said  
2 that Mario Rodriguez explained that, he'd be wrong?

3 A. Probably not. I don't know. I don't  
4 think so, ma'am.

5 Q. Would it help if I show you the report?

6 A. No, ma'am.

7 Q. Would it surprise you to learn that the  
8 man Mario Rodriguez raped was in prison for a DWI?

9 A. I have no clue what he was in prison for.  
10 I don't know the person.

11 Q. I asked you: Would it surprise you to  
12 learn that the man Mario Rodriguez raped was in  
13 prison for a DWI?

14 A. Yeah.

15 Q. And would it change your opinion of Mario  
16 Rodriguez to learn that that man was in prison for a  
17 DWI?

18 A. No.

19 Q. Now, I would like to go back to the  
20 interview that you had with Mr. Holguin on March  
21 10th, 2014. Do you recall telling Mr. Holguin that  
22 "if you look at the camera," he would see Dan  
23 Sanchez and Mario Rodriguez sitting at a table  
24 reviewing paperwork?

25 A. Sitting on the stoop, not the table.

1 Q. Okay. But that if they reviewed the  
2 video, they would see the two of them reviewing  
3 paperwork; correct?

4 A. I don't remember telling Holguin that.

5 MS. DUNCAN: If I can approach, Your  
6 Honor? Bates No. 12961 to 12962.

7 Q. If you could look at the bottom of this  
8 document -- first, let me show you the first page.  
9 You looked at this earlier; correct?

10 A. We did.

11 Q. And this is the report by Mr. Holguin  
12 about his interview with you on March 8 and March  
13 10th, 2014?

14 A. Yes.

15 Q. I gave you the wrong page. So I'm showing  
16 you page Bates stamped 12961, and ask you to look at  
17 the bottom, so about the third line from the bottom,  
18 and then on to the next page.

19 A. Yes, ma'am, I do remember that now.

20 Q. So you told -- on March 10th, 2014, you  
21 told Mr. Holguin that they should pull the cameras  
22 because it would show Mr. Sanchez and Mr. Rodriguez  
23 sitting at a table looking at the paperwork;  
24 correct?

25 A. They were.

1 Q. I asked: On March 10th, 2014, that's what  
2 you told Mr. Holguin; correct?

3 A. Yes.

4 MS. DUNCAN: Your Honor, I have no further  
5 questions.

6 THE COURT: Thank you, Ms. Duncan.

7 Ms. Bhalla?

8 MS. BHALLA: Not at this time.

9 THE COURT: Not at this time? All right.  
10 Thank you, Ms. Bhalla.

11 All right, Mr. Beck, do you have redirect  
12 of Mr. Montoya?

13 MR. BECK: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BECK:

16 Q. Good morning, Mr. Montoya.

17 A. Good morning, sir.

18 Q. Yesterday Ms. Fox-Young asked you some  
19 questions about Rudy Perez' statement to you in  
20 Estancia. Do you remember that?

21 A. Yes, sir.

22 Q. And I think she asked you about when in  
23 time that you told me that. Do you remember that?

24 A. Yes.

25 Q. At the time you were charged in this

1 federal case in December 2015, was Rudy Perez  
2 indicted at that time?

3 A. No.

4 Q. Was he indicted in the state case  
5 beforehand?

6 A. He was not.

7 Q. And the first time -- was the first time  
8 you told me about your discussion with Rudy Perez at  
9 Estancia when we met preparing for this trial on  
10 January 22?

11 A. It was. But I had thought I had brought  
12 it up before. I guess I hadn't, but I had disclosed  
13 it on the 22nd, sir.

14 Q. And did you disclose it to me when I asked  
15 you about each of these four defendants and whether  
16 any of them had told you anything related to the  
17 crime?

18 MS. FOX-YOUNG: Objection, leading.

19 A. Yes.

20 THE COURT: Overruled.

21 BY MR. BECK:

22 Q. Sorry, what was your answer to that?

23 A. My answer to that is yes.

24 Q. I think Mr. Jewkes asked you this morning  
25 about your tablet. When did your tablet break?

1           A.     It broke when I was in Lovington, New  
2 Mexico, at the detention there. It had fell and the  
3 screen had broke.

4           Q.     Has it been repaired since then?

5           A.     I haven't received it, sir.

6           Q.     So have you had the ability to look at  
7 your tablet since that time when it broke in  
8 Lovington?

9           A.     I have not.

10          Q.     Ms. Duncan asked you a lot about your  
11 state case with the Javier Molina murder. Do you  
12 remember that?

13          A.     Yes, sir.

14          Q.     Who were the other defendants charged in  
15 that state case?

16          A.     Timothy Martinez, myself, Jerry Armenta.  
17 Mario Rodriguez.

18          Q.     And so that's Timothy Martinez, Mario  
19 Rodriguez, Jerry Armenta and you; is that four  
20 people?

21          A.     Yes.

22          Q.     And I think earlier this morning  
23 Mr. Jewkes asked you about which four people were in  
24 the room with Javier Molina when he was murdered.  
25 Is it those same four people?

1 A. It is.

2 Q. And I don't have all of the exhibits in  
3 front of me that she asked you about, but do you  
4 recall her showing you a statement of Timothy  
5 Martinez that was filed in your state case?

6 A. I do, sir.

7 Q. And that's -- and I think you said -- was  
8 that statement true?

9 A. From Timothy Martinez?

10 Q. Right.

11 A. No.

12 Q. Has that statement been filed in this  
13 federal case?

14 A. No, it has not.

15 Q. Then, she went over --

16 MR. BECK: Your Honor, the United States  
17 moves to admit Defendants' Exhibit FL, FM, and FK.

18 MS. DUNCAN: I have no objection, Your  
19 Honor.

20 THE COURT: Does anybody else have any  
21 objection?

22 MS. BHALLA: I don't think I do. I just  
23 wanted to take a look.

24 THE COURT: Certainly.

25 MS. BHALLA: No objection.

1 THE COURT: Defendants' Exhibits FL, FK,  
2 and FM will be admitted into evidence.

3 (Defendants' Exhibits FL, FK, and FM  
4 admitted.)

5 MR. BECK: May I publish to the jury, Your  
6 Honor?

7 THE COURT: You may.

8 BY MR. BECK:

9 Q. Mr. Montoya, I'm showing you what's now  
10 been admitted as Defendants' Exhibit FL. At the top  
11 it says "State of New Mexico, County of Dona Ana,  
12 Third Judicial District, State of New Mexico versus  
13 Jerry Montoya." Is that the State Javier Molina  
14 case?

15 A. It is, yes, sir.

16 Q. And it says that this is amended  
17 defendant's application motion for defense witness  
18 immunity. Is that you as the defendant, your motion  
19 for witness immunity?

20 A. Yes, sir.

21 Q. And here on the back page of that, is this  
22 the statement from Mario Rodriguez that you and I  
23 just -- or that you went over with Ms. Duncan just  
24 now?

25 A. Yeah, it is.

1 Q. And in this statement, is he telling the  
2 truth, or is he lying about your involvement in the  
3 Molina murder?

4 THE COURT: Let's not have Mr. Montoya  
5 decide whether he's lying. That will be for the  
6 jury to decide. He can say whether it's true or  
7 not.

8 Q. Is what he says in here about your  
9 involvement true in the Molina murder?

10 A. No, sir.

11 Q. And Exhibit FM here, this is an order  
12 granting application for use of immunity. Is this  
13 again in your state case for the Javier Molina  
14 murder?

15 A. Yes, sir.

16 Q. And does that grant Jerry Armenta immunity  
17 but not Mario Rodriguez?

18 A. That's what it reads, sir.

19 Q. And last, this is Exhibit FK. And is this  
20 again in your state Javier Molina murder case?

21 A. Yes, sir.

22 Q. And attached to the back of this, is this  
23 Timothy Martinez's statement that you and I were  
24 just talking about?

25 A. It is, sir.



1 Q. Is what Mr. Martinez says in this  
2 statement true?

3 A. No.

4 Q. And I'm showing you again Exhibit FM,  
5 which was filed June 9 of 2015; FL, which was filed  
6 May 12 of 2015; and FK, which was filed January 12,  
7 2015. Are those the dates those were filed?

8 A. I see that, yes, sir.

9 Q. Were you still a member of the SNM at that  
10 time?

11 A. I was.

12 Q. Were you cooperating with the federal  
13 government in this case at that time?

14 A. No.

15 Q. I think yesterday when we talked about --  
16 let me show you -- I'm showing you what's been  
17 admitted as Defendants' Exhibit FG. Excuse me. Is  
18 that the letter you sent to your attorney after you  
19 received Jerry Armenta's statement?

20 A. Yes, sir.

21 Q. You and I talked about this yesterday. Do  
22 you remember that?

23 A. Yes.

24 Q. I think when I asked you why you sent that  
25 letter to your attorney, you said, "Because it was

1 my way out. That was my ticket to freedom. That  
2 was my way out of jail." Do you remember that?

3 A. I do, sir.

4 Q. Did you file those statements from Mr.  
5 Martinez, Mr. Rodriguez, and Mr. Armenta in state  
6 court because you wanted to get out of jail for the  
7 Javier Molina murder?

8 A. I did, yeah.

9 Q. Did you file them because you didn't want  
10 to serve a life sentence in prison?

11 A. Absolutely.

12 Q. Is that what you meant by "they were your  
13 ticket to freedom"?

14 A. Yes, sir.

15 Q. I'm showing you what's been admitted as  
16 Government's Exhibit 681. Do you recognize what  
17 that is?

18 A. That's my plea agreement with the  
19 Government.

20 Q. And in your plea agreement with the  
21 Government, what sentence are you facing right now  
22 after you pled guilty?

23 A. Life in prison.

24 Q. The next page, please, and paragraph 6.

25 Mr. Montoya, I'm showing you paragraph 6

1 in Government's Exhibit 681. We went over this  
2 yesterday. What does this paragraph mean to you?

3 A. That potentially I may have a downward  
4 departure.

5 Q. Does that mean that you may potentially  
6 serve less than a life sentence?

7 A. It does.

8 Q. Will you go to the page before and show us  
9 paragraph 2, please?

10 Now, Mr. Montoya, I'm showing you  
11 paragraph 2 of Government's Exhibit 681. What are  
12 you required to do to possibly get out of a life  
13 sentence in this case?

14 A. Tell the truth.

15 Q. And in that second sentence, what does  
16 that second sentence say that you have to do to  
17 possibly get out of a life sentence in this case?

18 A. That if I give false testimony, it's not  
19 going to help me or minimize my role.

20 Q. Does it also say that if you exaggerate  
21 the involvement of any person in the crime, you  
22 violate this plea agreement?

23 A. Yes, sir.

24 Q. Over the last two days have you told us  
25 the truth about your involvement in this case?

1 A. Absolutely.

2 Q. Have you told us the truth about others'  
3 involvement in this case?

4 A. Yes, sir.

5 Q. And did you sign that plea agreement  
6 before you told us about Mr. Sanchez telling you to  
7 be trucha and get it done before you went and killed  
8 Javier Molina?

9 A. Yeah.

10 Q. Did you sign that plea agreement before  
11 you told us that Mr. Perez talked to you about  
12 providing his shanks in Estancia?

13 A. Yeah.

14 MR. BECK: May I have a moment, Your  
15 Honor?

16 THE COURT: You may.

17 MS. JACKS: We'd ask for that last answer  
18 to be limited, please.

19 THE COURT: All right. It will be limited  
20 to Mr. Perez's consideration of the charges against  
21 him, and not be considered as to any other defendant  
22 in the case.

23 MR. BECK: Pass the witness, Your Honor.

24 THE COURT: Thank you, Mr. Beck. Anything  
25 further, Ms. Fox-Young?

1 MS. FOX-YOUNG: Briefly, Your Honor.

2 THE COURT: Ms. Fox-Young.

3 RECROSS-EXAMINATION

4 BY MS. FOX-YOUNG:

5 Q. Mr. Montoya?

6 A. Yes, ma'am.

7 Q. It's your testimony that you killed Javier  
8 Molina on March 7, 2014; right?

9 A. It is.

10 Q. And that you were caught on video doing  
11 it; right?

12 A. Yeah.

13 Q. And that ever since then, beginning with  
14 statements that you made the next day, you've been  
15 looking for a ticket to freedom; right?

16 A. I had a year to go home at that time. So  
17 yes.

18 Q. Yes or no, Mr. Montoya, you were looking  
19 for a ticket to freedom?

20 A. Yes.

21 Q. And in the course of the last almost four  
22 years, you've told the authorities a number of  
23 different stories in an attempt to find your  
24 freedom, haven't you? You just told Mr. Beck that  
25 all those statements that you made and submitted to

1 the Court in order to get immunity for other  
2 individuals -- those weren't true; right?

3 A. At first they were not. Once I decided to  
4 cooperate with the Government, I had to tell the  
5 truth.

6 Q. Those statements weren't true; right?

7 A. In the beginning, the state case, they  
8 were not true, no.

9 Q. And the statements that you made to the  
10 Government about the cellphone and your girlfriend,  
11 Ms. Alvarado -- those weren't true; right?

12 A. I was just trying to protect her.

13 Q. And you're aware --

14 MS. JACKS: Objection, nonresponsive.

15 THE COURT: Overruled.

16 BY MS. FOX-YOUNG:

17 Q. You're aware that Mr. Perez was charged in  
18 April 2016?

19 A. Yeah, for his involvement.

20 Q. And you were housed with Mr. Perez for a  
21 period of time until you left Torrance County  
22 Detention Center in October of 2016; isn't that  
23 right?

24 A. That's when he told me his involvement.

25 Q. Please answer the question, Mr. Montoya.

1 A. I'm sorry. Yes, ma'am.

2 Q. And it was then 15 months from the time  
3 that you left the Torrance County Detention Center  
4 until the day -- just the day before this trial  
5 started that you told Mr. Beck, upon his prodding,  
6 that Mr. Perez made that statement to you; isn't  
7 that right?

8 A. Yes, ma'am.

9 MS. FOX-YOUNG: Thank you, Your Honor. No  
10 further questions.

11 THE COURT: Thank you, Ms. Fox-Young.  
12 Anything further? Ms. Duncan?

13 MS. DUNCAN: Thank you, Your Honor.

14 RECROSS-EXAMINATION

15 BY MS. DUNCAN:

16 Q. If we could bring up Government's Exhibit  
17 681, please, paragraph 2. Start with page 1. I'm  
18 sorry, can we start with Government's Exhibit 680,  
19 the last page, please?

20 Government's Exhibit 680 is your plea  
21 agreement; correct?

22 A. It is, ma'am.

23 Q. And you signed that plea agreement on  
24 January 26, 2017?

25 A. Yes, ma'am.

1 Q. Government's Exhibit 681 is the addendum  
2 to that agreement; correct?

3 A. It is.

4 Q. It was also signed on January 26, 2017?

5 A. Yes, ma'am.

6 Q. If we could see Government's Exhibit 681,  
7 please, paragraph 2, if we could highlight that,  
8 please.

9 You just covered this paragraph with Mr.  
10 Beck; correct?

11 A. Yes, ma'am.

12 Q. And in this agreement that you signed, you  
13 said that you agreed to cooperate with the United  
14 States by giving truthful and complete information  
15 and/or testimony concerning the defendant's  
16 participation in and knowledge of criminal  
17 activities; correct?

18 A. Yes, ma'am.

19 Q. You violated that agreement; correct?

20 A. I did.

21 Q. You gave Mr. Beck false information about  
22 your own criminal activity?

23 A. I did, yes.

24 Q. And you gave him false information about  
25 Ms. Alvarado's criminal activity.



1 A. I didn't mention it, ma'am.

2 Q. You gave him -- you just didn't mention  
3 Ms. Alvarado; correct?

4 A. Yes.

5 Q. But you gave false information about your  
6 own involvement?

7 A. I did.

8 Q. So you violated this by telling him that  
9 it wasn't your cellphone; correct?

10 A. Yes, ma'am.

11 Q. It had been brought in by someone else?

12 A. Yeah.

13 Q. And that you weren't involved in the  
14 distribution of drugs while a Government witness?

15 A. That's what I said.

16 Q. So you understand from this paragraph that  
17 because you were untruthful with Mr. Beck, the  
18 United States has the right to rescind the plea  
19 agreement and reinstitute criminal proceedings  
20 against the defendant; correct?

21 A. Absolutely.

22 Q. "The defendant" being you?

23 A. Yes.

24 Q. If we could go page 2, paragraph 6.

25 Now, you're in violation of your plea

1 agreement and it's now up to the people at this  
2 table to decide whether to file a motion for a  
3 downward departure for you; correct?

4 A. It's up to them, whatever they feel like.

5 Q. So they're within their rights, based on  
6 your violation of the plea agreement, to give you  
7 nothing; correct?

8 A. It is, yes.

9 Q. So you have to earn back the Government's  
10 good graces; correct?

11 A. If I'm in good graces with them, yeah.

12 Q. That's the only way you're going to get  
13 your motion for a downward departure; right?

14 A. The way I earn my downward departure is by  
15 telling the truth, which I've been.

16 Q. That wasn't my question. My question was:  
17 They're the only ones who can file a motion;  
18 correct?

19 A. Yeah, they filed the motion.

20 Q. So they decide whether you're being  
21 truthful, and whether your testimony is worth filing  
22 a motion for a downward departure; correct?

23 A. Yeah, it's up to them.

24 Q. Mr. Beck asked you about those pleadings  
25 filed on your behalf in the state trial. Your state

1 trial was scheduled to commence on December 4, 2015;  
2 correct?

3 A. Yes, ma'am.

4 Q. And the State filed a nolle prossed  
5 dismissal because the federal government was taking  
6 it up; correct?

7 A. Yes.

8 Q. And that state court is a court just like  
9 this one; correct?

10 A. What?

11 Q. The state court is a court just like this  
12 one?

13 A. Yes.

14 Q. And had you gone to trial, you would have  
15 been tried in front of a jury just like this one?

16 A. Yes.

17 MS. DUNCAN: I have no further questions,  
18 Your Honor.

19 THE COURT: Thank you, Ms. Duncan.

20 Mr. Jewkes, do you have anything?

21 MR. JEWKES: No, Your Honor.

22 THE COURT: Mr. Beck, do you have anything  
23 further?

24 MR. BECK: No, Your Honor. The witness  
25 may step down.

1 THE COURT: All right. Mr. Montoya, you  
2 may step down.

3 Is there any reason Mr. Montoya cannot be  
4 excused from the proceedings, Mr. Beck?

5 MR. BECK: Not from the Government, Your  
6 Honor.

7 MS. FOX-YOUNG: Your Honor, we'd like to  
8 reserve this witness.

9 THE COURT: All right. You're going to be  
10 subject to re-call, so you'll be able to leave and  
11 leave the building. But you can't come back into  
12 the courtroom. Since you're subject to re-call,  
13 you're not free to discuss your testimony with  
14 anyone.

15 Thank you, Mr. Montoya. I appreciate your  
16 testimony.

17 All right. Does the Government have its  
18 next witness or evidence?

19 MR. BECK: Yes, Your Honor. The United  
20 States calls Rogelio Fierro.

21 THE COURT: Mr. Fierro, if you'll come up  
22 and stand next to the witness box on my right, your  
23 left. Before you're seated, Ms. Standridge, my  
24 courtroom deputy, will swear you in.

25 THE CLERK: Please be seated. State and

1 spell your name for the record.

2 THE WITNESS: Good morning. My name is  
3 Rogelio Fierro, R-O-G-E-L-I-O, F-I-E-R-R-O.

4 THE COURT: Mr. Fierro.  
5 Mr. Beck?

6 ROGELIO FIERRO,  
7 after having been first duly sworn under oath,  
8 was questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BECK:

11 Q. Good morning, Mr. Fierro.

12 A. Good morning.

13 Q. How are you employed?

14 A. I'm employed with the Southern Department  
15 of Corrections.

16 Q. And -- and where are you employed with the  
17 Department of Corrections?

18 A. In Las Cruces.

19 Q. How long -- is that at the Southern New  
20 Mexico Correctional Facility?

21 A. Correct.

22 Q. How long have you been employed with the  
23 Department of Corrections?

24 A. A little over five years.

25 Q. When did you start?

1 A. November, 2012.

2 Q. Where have you worked since November of  
3 2012?

4 A. I worked in Las Cruces, and pretty much  
5 the whole facility.

6 Q. And what's your position within the  
7 Corrections Department?

8 A. I'm a Correctional Officer I.

9 Q. And what are your duties as a Correctional  
10 Officer I?

11 A. My duties go from welfare of inmates,  
12 security, prevent escapes, accountability.

13 Q. What did you do before you became a  
14 correctional officer?

15 A. I worked for HVAC -- for a company out of  
16 El Paso, as well as mechanic work at a youth center.

17 Q. And what did you do before that?

18 A. I did five years in the Marine Corps.

19 Q. Were you at the Southern New Mexico  
20 Correctional Facility on March 7 of 2014?

21 A. Yes.

22 Q. And what were your job duties that day?

23 A. I was a rover, I believe, in one of the 4s  
24 units.

25 Q. What does a rover do?

1 A. He conducts rounds, feeds chow; again,  
2 make sure inmates are well, conducts movement.

3 Q. And do you remember which unit you were  
4 being a rover in that day?

5 A. Not exactly the unit, but I believe it was  
6 in the 4s.

7 Q. And speak up to the microphone a little  
8 bit. I didn't catch that last part.

9 A. Not exactly which individual unit, I just  
10 remember it was in the 4s.

11 Q. The force?

12 A. The 4s.

13 Q. Oh, the 4s?

14 A. Yes, 4-A or 4-B, one or the other.

15 Q. 4-A or 4-B. Okay. At some point that  
16 night, were you called to an incident?

17 A. Yes.

18 Q. When was that?

19 A. I believe this was after 5:00 chow, around  
20 5:00.

21 Q. And what happened?

22 A. I got a call over the radio saying there  
23 was a stabbing in the Unit 1-A, blue pod.

24 Q. And what did you do when you received that  
25 call?

1           A.     After the call, we responded. We made our  
2 way over to 1-A.

3           Q.     And what did you do when you arrived at  
4 Unit 1-A?

5           A.     We waited outside the door of blue pod  
6 until more responders showed up. Once there was  
7 enough people, they let us in.

8           Q.     And what happened when you entered the  
9 blue pod?

10          A.     When I entered, Javier Molina was on the  
11 floor next to the door. I continued to go around  
12 him, and start locking down inmates.

13          Q.     What did you do after you went around him  
14 and started locking down inmates?

15          A.     I went upstairs and started looking around  
16 for any type of evidence.

17          Q.     All right. And then what did you do?

18          A.     I noticed water droplets with a little bit  
19 of blood going into -- I believe, cell 110 or 11. I  
20 told the sergeant that was in the room. After a  
21 couple minutes, I got called out to go to the  
22 infirmary, to make my way to the infirmary. I was  
23 being told that I was going to go on the ambulance  
24 with Mr. Molina.

25          Q.     When you entered the unit and you saw



1 Mr. Molina, did you observe anything in relation to  
2 what he was doing?

3 A. No, he was just laying unconscious on the  
4 floor.

5 Q. And what happens when you get that call to  
6 go to the infirmary?

7 A. I make my way out of the unit, I go to the  
8 infirmary, and I enter the ER, and I wait for the  
9 ambulance to get there.

10 Q. And what happens during that time?

11 A. Other officers are giving CPR to Molina,  
12 along with the nurse and the doctor.

13 Q. How many other officers are in the  
14 infirmary with you?

15 A. The exact number, I don't remember. There  
16 was a few, between eight and 10, maybe.

17 Q. Did you do CPR while you were in the  
18 infirmary with Mr. Molina?

19 A. Not in the infirmary, no.

20 Q. Why is that?

21 A. I told myself that if I was going to be  
22 doing CPR in the ambulance, I didn't want to exhaust  
23 myself before getting to the hospital.

24 Q. Who was doing CPR on Mr. Molina while you  
25 were in there?

1 A. It was all the other responders. They  
2 were taking turns.

3 Q. And how long -- how long were you in the  
4 infirmary before the EMTs came?

5 A. I'd say about 10, 15 minutes, maybe.

6 Q. And was somebody doing CPR or chest  
7 compressions on Mr. Molina that entire time?

8 A. Yes.

9 Q. What happens when the EMTs come?

10 A. When the EMTs get there, Mr. Molina is  
11 carted out through the back. And once he was placed  
12 inside the ambulance, myself and Officer Amato  
13 kept -- continued doing CPR, and then the EMTs just  
14 started putting the machine -- follow his vitals on.

15 Q. So did you get in the back of the  
16 ambulance with Mr. Molina?

17 A. Yes.

18 Q. And who else was in the ambulance with  
19 you?

20 A. It was Officer Amato and two EMTs.

21 Q. Is Officer Amato another corrections  
22 officer?

23 A. Correct.

24 Q. And so I think you said that as you got in  
25 there, they were hooking him up to machines. What

1 happened?

2 A. I remember the EMTs saying that they  
3 couldn't find his vitals, so they continued to, I  
4 believe, insert a screw in his knee, what I can  
5 remember, while me and Amato continued to do CPR.

6 Q. Had you had CPR training?

7 A. Yes.

8 Q. And what happened in the ambulance? Did  
9 you get to the hospital at some point?

10 A. Yes. As soon as we got there, we were  
11 told to stop briefly while they took him out of the  
12 ambulance and took him inside to the ER.

13 Q. So which hospital did they take Mr. Molina  
14 to?

15 A. To MMC.

16 Q. Is that Memorial Medical Center?

17 A. Correct.

18 Q. And where is this that?

19 A. In Las Cruces.

20 Q. How long did it take you to get from  
21 Southern New Mexico Correctional Facility to  
22 Memorial Medical Center?

23 A. It's around 15 minutes.

24 Q. And were you or Officer Amato doing chest  
25 compressions that entire time?

1 A. Yes, the whole way.

2 Q. And what was happening in relation to  
3 Mr. Molina during that ambulance ride?

4 A. He was unconscious the whole time from the  
5 facility to the hospital.

6 Q. What did you observe with regard to his  
7 wounds?

8 A. He kept bleeding profusely.

9 Q. Was it more blood or less blood than you  
10 saw in the infirmary and in the pod?

11 A. More.

12 Q. Was he conscious? Were his eyes closed?  
13 What else did you observe?

14 A. He was unconscious the whole way. His  
15 eyes were closed.

16 Q. Did you observe him breathing?

17 A. No. The only breathing that was occurring  
18 was through the mask.

19 Q. What happened when you arrived at Memorial  
20 Medical Center?

21 A. When we arrived, the nurses were waiting  
22 for him. They removed him from the ambulance and  
23 took him inside to one of the ERs.

24 Q. And what did you do?

25 A. We walked behind them as they walked him

1 inside, and then we just stood off to the side,  
2 inside the ER, while the nurses worked around him.

3 Q. What happened next?

4 A. A couple of seconds after arriving and  
5 after Molina being inside the emergency room, the  
6 doctor walked in briefly, stepped inside the door,  
7 and he said he's going to call it.

8 Q. What do you mean, "Call it"?

9 A. He was going to pronounce him deceased at  
10 the time.

11 Q. And did he do that?

12 A. Yes.

13 Q. What happened after the doctor pronounced  
14 him deceased?

15 A. After he pronounced him deceased, the  
16 doctor walked out, and most of the nurses followed  
17 behind him.

18 Q. How long was the period of time between  
19 when you arrived at Memorial Medical Center and  
20 helped Mr. Molina off -- off the ambulance and the  
21 time when the doctor arrived to pronounce him  
22 deceased?

23 A. From the facility to the hospital?

24 Q. From when you arrived at the hospital  
25 until when the doctor came in and pronounced

1 Mr. Molina deceased?

2 A. No more than two or three minutes, I would  
3 say.

4 Q. What did you do -- and what happened  
5 after -- after he was pronounced deceased, what did  
6 you do?

7 A. We called back to the facility, let our  
8 supervisors know the situation, a progress report.  
9 And we were advised to stay with Molina until he was  
10 placed in the morgue.

11 Q. And what did you do during that time?

12 A. We just waited for the medical examiner to  
13 come take pictures and clean up Molina's wounds,  
14 count them. And then we assisted in placing him in  
15 a -- a body bag.

16 Q. Were you in the room while the medical  
17 examiner came in and took pictures and cleaned the  
18 wounds?

19 A. Yes.

20 Q. And then did you help escort Mr. Molina to  
21 the morgue?

22 A. Yes.

23 Q. What did you do then?

24 A. After he was checked into the morgue, we  
25 simply grabbed all the belongings and returned back

1 to the facility.

2 Q. How long from the time you arrived until  
3 after you helped put Mr. Molina into the morgue, how  
4 long was that period of time?

5 A. About four hours.

6 Q. All right. And what happened after you  
7 collected Mr. Molina's belongings?

8 A. We returned back to the facility.

9 Q. At approximately what time did you get  
10 back to the facility?

11 A. A little over 10:00, around 10:30.

12 MR. BECK: May I have a moment, Your  
13 Honor?

14 THE COURT: You may.

15 MR. BECK: Pass the witness, Your Honor.

16 THE COURT: Thank you, Mr. Beck. Any  
17 cross-examination?

18 MR. LOWRY: No, Your Honor.

19 Mr. Villa?

20 MR. VILLA: Just briefly.

21 THE COURT: All right. Mr. Villa?

22 CROSS-EXAMINATION

23 BY MR. VILLA:

24 Q. Good morning, Officer Fierro.

25 A. Good morning.

1 Q. You said when you went into the blue pod  
2 after they opened the doors, you locked down  
3 inmates?

4 A. Correct.

5 Q. So those are inmates who are out of their  
6 cells, that then had to go into their cells, and the  
7 doors had to be shut?

8 A. Correct.

9 Q. And isn't it correct that Mr. Perez was  
10 already locked in his cell when you went to do that?

11 A. I don't recall who -- if everybody was  
12 out. I just remember going downstairs to the bottom  
13 tier and helping lock down the bottom tier.

14 Q. You know Mr. Perez was down there on the  
15 bottom tier?

16 A. Yes.

17 Q. And you're saying you don't remember  
18 whether he was locked in or not?

19 A. Correct. I remember from working there a  
20 few times kind of where each inmate was housed. I  
21 just don't remember if Mr. Perez was outside at that  
22 time or not.

23 Q. And you don't have a specific memory of  
24 actually having to put him in his cell and lock the  
25 door?



1 A. No.

2 MR. VILLA: That's all the questions I  
3 have.

4 THE COURT: Thank you, Mr. Villa.  
5 Anyone else have any?

6 MR. JEWKES: No, Your Honor.

7 THE COURT: All right. Anything further,  
8 Mr. Beck?

9 MR. BECK: Briefly, Your Honor.

10 THE COURT: Mr. Beck?

11 REDIRECT EXAMINATION

12 BY MR. BECK:

13 Q. Mr. Fierro, I'm going to show you what's  
14 been previously admitted as Government's Exhibit 15.  
15 Do you recognize what's depicted in that photograph?

16 A. Yes.

17 Q. What is that?

18 A. The blue pod.

19 Q. And that is where you encountered the  
20 other corrections officers outside of the door  
21 before you went in, after you were called to the  
22 disturbance there?

23 A. Correct.

24 Q. I'm going to show you what's been admitted  
25 as Government's Exhibit 17.

1 Do you recognize what's depicted in that  
2 paragraph?

3 A. Yes.

4 Q. What is that?

5 A. It's right in front of the door in blue  
6 pod, in 1-A.

7 Q. And on March 7, 2014, when they opened the  
8 doors and you entered, what did you see right in  
9 front of that door?

10 A. Molina was facing upward on the ground,  
11 his head towards the corner.

12 MR. BECK: Nothing further, Your Honor.

13 THE COURT: Thank you, Mr. Beck.

14 All right. Mr. Fierro, you may step down.

15 Is there any reason Mr. Fierro cannot be  
16 excused from the proceedings, Mr. Beck?

17 MR. BECK: No, Your Honor. Thank you.

18 THE COURT: From the defendants'  
19 standpoint, can he be excused?

20 MR. VILLA: Yes, Your Honor.

21 THE COURT: All right. Mr. Fierro, you  
22 are excused from the proceedings. Thank you for  
23 your testimony.

24 A. Thank you, Your Honor.

25 THE COURT: All right. Ms. Armijo, does

1 the Government have its next witness or evidence?

2 MS. ARMIJO: Yes, Your Honor, Timothy  
3 Martinez.

4 MR. VILLA: Your Honor, can we approach?

5 THE COURT: You may.

6 (The following proceedings were held at  
7 the bench.)

8 MR. VILLA: A couple things with respect  
9 to Mr. Martinez. I believe his tablet was one of  
10 the ones that the Court ordered to be provided, and  
11 I don't think we've had an opportunity yet for our  
12 expert to receive that tablet.

13 THE COURT: Where is the tablet right at  
14 the moment?

15 MS. ARMIJO: It was -- I know it was  
16 examined yesterday per court order.

17 THE COURT: By the FBI?

18 MS. ARMIJO: No, by the NMCD, in custody  
19 of the U.S. Marshals. And I think they had made  
20 arrangements with the U.S. Marshals to send it to  
21 their expert with Mr. Lowry. So I have no idea.

22 MR. VILLA: Your Honor, I think that's  
23 right. It was supposed to go to our expert, as  
24 well. And I don't think he has received it yet.  
25 Mr. Lowry may speak to that.

1 MR. LOWRY: Your Honor, it's my  
2 understanding from speaking with Marshal Mickendrow  
3 yesterday that the tablets weren't Fed Ex'd until  
4 yesterday, because there was some confusion about  
5 which tablets had been compromised and which hadn't.  
6 And once they sorted that out, it's my understanding  
7 from Mickendrow that those were Fed Ex'd out  
8 yesterday. I can call and confirm, see if they  
9 arrived this morning. But they would just be  
10 getting to the West Coast about now.

11 THE COURT: Well, I guess what I'd  
12 suggest, let's plow ahead. We have to re-call him  
13 or something so that you can cross-examine him about  
14 anything that you find on it. We'll have to do  
15 that. He may be on the stand a while; right?

16 MS. ARMIJO: He may be.

17 THE COURT: So if you don't have the --  
18 you may have a report later today. Let's see how it  
19 goes.

20 MR. VILLA: I'd just ask for some leeway  
21 on the cross-examination.

22 THE COURT: Sure.

23 MR. VILLA: The other issue,  
24 Mr. Candelaria -- I believe the Government might  
25 correct me if I'm wrong -- is representing Mario

1 Montoya, who is a cooperator. I think he was  
2 represented by Michael Keefe, who has since retired.  
3 So I think an admonish- --

4 THE COURT: Mr. Candelaria, come up.

5 MR. VILLA: Just for the record, I'd ask  
6 he be excluded, but at least an admonishment.

7 THE COURT: He represents --

8 MS. ARMIJO: Mario Montoya.

9 THE COURT: How are you doing,  
10 Mr. Candelaria?

11 MR. CANDELARIA: I'm well. Thank you.

12 THE COURT: I haven't been excluding  
13 attorneys -- I excluded one -- but if I can have  
14 your representation, assurance that you won't be a  
15 conduit for information of what's taking place here,  
16 I'm not going to invoke the rule against you.

17 MR. CANDELARIA: Of course not, Your  
18 Honor.

19 THE COURT: I think I can take your word  
20 for it, but promise the Court you'll not be a  
21 conduit of what takes place here in talking to Mario  
22 Montoya.

23 MR. CANDELARIA: Of course not.

24 THE COURT: Is that good enough for  
25 everybody?

1 MS. ARMIJO: Yes.

2 THE COURT: All right. Anything else?

3 MR. VILLA: No, Your Honor.

4 (The following proceedings were held in  
5 open court.)

6 THE COURT: All right. Mr. Martinez, if  
7 you'll come in and stand next to the witness box  
8 right here in front of you. And before you're  
9 seated, if you'll raise your right hand to the best  
10 of your ability, my courtroom deputy, Ms.  
11 Standridge, will swear you in.

12 TIMOTHY MARTINEZ,  
13 after having been first duly sworn under oath,  
14 was questioned, and testified as follows:

15 THE CLERK: Please be seated. State and  
16 spell your name for the record.

17 THE WITNESS: Timothy Martinez.  
18 T-I-M-O-T-H-Y, M-A-R-T-I-N-E-Z.

19 THE COURT: Mr. Martinez. Ms. Armijo.

20 MS. ARMIJO: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. ARMIJO:

23 Q. Mr. Martinez, are you or have you been a  
24 member of the Sindicato de Nuevo Mexico?

25 A. Yes, ma'am.

1 Q. When did you become a member?

2 A. In 2009, March of 2009.

3 Q. And were you incarcerated at that time?

4 A. Yes, ma'am.

5 Q. Where were you incarcerated?

6 A. I was at PNM, Level 5, in Santa Fe, New  
7 Mexico.

8 Q. Okay. And the jury has heard that there  
9 are two facilities there?

10 A. There's three.

11 Q. Correct. I think that they've mainly  
12 heard about two facilities there, being the North  
13 and the South. Were you in either one of those  
14 facilities?

15 A. Yes, ma'am, the Level 5, the South.

16 Q. And who brought you in to the SNM?

17 A. Arturo Garcia, Michael Zamora, and Billy  
18 Cordova.

19 Q. What is the SNM?

20 A. The SNM is a violent criminal  
21 organization. It's known for its fear and it's --  
22 anything violent, the SNM is into it. It's pretty  
23 much a gang that's running the New Mexico prison  
24 system. And not just the prison system; it's also  
25 on the streets of New Mexico. And like I say,

1 they're involved in everything from extorting to  
2 murders, kidnapping. It's an ongoing organization  
3 that's just getting more and more reputation through  
4 the violence and the acts that they commit, they get  
5 more fear and respect, so it's a dangerous group of  
6 individuals.

7 Q. Now, do they have an agenda that you know  
8 of?

9 A. Well, like I say, they take pride in  
10 knowing that they're the topmost violent gang in the  
11 prison system. You know what I mean? They always  
12 want that respect. They -- the objective is to be  
13 the best in the criminal world, pretty much, of New  
14 Mexico.

15 Q. Now, is there any sort of structure that  
16 you're aware of?

17 A. Yeah, it's like a military structure. You  
18 have your top, you have your captains, your  
19 lieutenants, your sergeants. It's military-based.  
20 There is chain of command. It's from the captains  
21 all the way down to your regular soldiers down to  
22 the very bottom man.

23 Q. In your time with the SNM, what was your  
24 position, mainly?

25 A. I was a soldier.



1 Q. And so you mentioned that SNM is involved  
2 in drugs; is that correct?

3 A. Yes, ma'am.

4 Q. Were you involved with drugs with the SNM?

5 A. Yes, ma'am. That was my primary thing in  
6 the SNM. I was known for narcotics.

7 MS. ARMIJO: Now, I'm going to be moving  
8 for the admission of 236, with no objection, Your  
9 Honor.

10 THE COURT: No objection to 236?  
11 Government's Exhibit 236 will be admitted into  
12 evidence.

13 (Government Exhibit 236 admitted.)

14 BY MS. ARMIJO:

15 Q. Would you please display the first page on  
16 this?

17 Mr. Martinez are you familiar with this  
18 object? And you may not be. I'm not sure if you  
19 are.

20 A. I'm really not, ma'am.

21 Q. Okay, we are going to go -- do you see  
22 that it has your name there?

23 A. Yes, ma'am.

24 Q. And it looks like it's from the  
25 Corrections Department?

1 A. Yes.

2 Q. Right. I'm going to first go to the  
3 fourth page of that item. Are you familiar with  
4 this item?

5 A. Yes, ma'am.

6 Q. And I want to talk a little bit about your  
7 criminal history here. Were you convicted of, in  
8 this case specifically -- how old were you -- let me  
9 first back up. How old were you when you first  
10 entered the Department of Corrections?

11 A. I was 21 years old.

12 Q. And is this the case, if you can look at  
13 it, that eventually sent you to the Department of  
14 Corrections?

15 A. In fact, it's not.

16 Q. Okay. Which was the first one that sent  
17 you to the Department of Corrections?

18 A. It was a case out of Bernalillo County,  
19 out of Albuquerque, New Mexico, in 2004. It was an  
20 armed robbery charge. The paper that we're looking  
21 at right now is a charge that I picked up prior to  
22 that, which was possession with intent to distribute  
23 narcotics. And they gave me probation for that.  
24 This is my very first charge, the paper we're  
25 looking at. This is verification of that charge.

1 Q. So you first have a  
2 possession-of-narcotics charge; is that correct?

3 A. Yes, ma'am.

4 Q. And you were placed on probation?

5 A. Yes.

6 Q. That was revoked when you committed an  
7 armed robbery?

8 A. Yes, ma'am.

9 Q. And I believe we can go to the next Bates  
10 stamp 8797, which should be two pages further down.  
11 All right. And if we could go to the -- do you  
12 recognize that court number?

13 A. Yes, ma'am. That's my armed robbery  
14 charge.

15 Q. Okay. And if we could go to the next page  
16 of that. Is that your armed robbery conviction  
17 there?

18 A. Yes, ma'am.

19 Q. Did you receive nine years?

20 A. I received nine years with seven years  
21 suspended, which left me a total of two years'  
22 incarceration.

23 Q. And do you also have -- if we could go to  
24 Bates 8807 of that document, do you also have one  
25 more case in which you received felony convictions

1 as well? And I'm sorry, it's page 11 of that  
2 document. Are you familiar with this page?

3 A. Yes, ma'am.

4 Q. And are those the convictions that you  
5 have in relationship to this case?

6 A. Yes, ma'am.

7 Q. All right. And how many years did you  
8 receive for this case?

9 A. This case, I was given 32-and-a-half years  
10 with 20 years suspended, which left me a total of 12  
11 and a half of incarceration.

12 Q. All right. Now, out of all of these  
13 cases -- you've mentioned that you are an SNM Gang  
14 member. Were any of these incidents that we've  
15 talked about so far committed for the SNM, or was  
16 this prior to you becoming an SNM member?

17 A. These were all prior to becoming a member.

18 Q. Now, were you a member of a street gang?

19 A. No, ma'am.

20 Q. Did you actually graduate from high  
21 school?

22 A. Yes, ma'am, I did.

23 Q. What were you considered in high school?

24 A. In high school I was a jock and a cowboy  
25 I've always excelled in sports. In high school, I

1 was in the Honor Society. You know what I mean?  
2 I've always been a jock. I was a team captain of the  
3 varsity wrestling team, two times state champ. You  
4 know what I mean? So I was never really a gangster.  
5 I was always a jock and a cowboy.

6 Q. And did you grow up in Silver City?

7 A. Yes, ma'am.

8 Q. Now, did you join the Marines?

9 A. Yes, ma'am, I did. I joined right after I  
10 graduated high school.

11 Q. And when you -- did you leave the Marines  
12 after a time period?

13 A. Yes, ma'am.

14 Q. Can you tell us about that?

15 A. I caught an R2 15 Section B discharge,  
16 other than honorable discharge. I ended up getting  
17 in a confrontation, a physical confrontation, with  
18 my superior officer, which led me to get court  
19 martialed, and I got an other than honorable  
20 discharge for it.

21 Q. And how old were you at that time?

22 A. 19? Going -- yeah, 19.

23 Q. And after that, is it then that you  
24 started getting involved in criminal activity?

25 A. Yes, ma'am. I hit a very low point, and

1 because it was always my dream to be a military,  
2 Marine, and I just hit a bad spot, so I downward  
3 spiraled from there, got involved in drugs and  
4 stuff.

5 Q. Now, you mentioned that you were brought  
6 into the gang in 2009; is that correct?

7 A. Yes, ma'am.

8 Q. At the South. And what did you -- you  
9 were South Level 4. Were there other gang members  
10 there?

11 A. Level 5.

12 Q. I'm sorry, Level 5 at the South. Were  
13 there other gang members there, other than the ones  
14 that you mentioned that brought you in?

15 A. Yes, ma'am, there was more SNM members.  
16 There was multiple gangs. The North and South  
17 facility there, the maximum security prisons they  
18 usually house a lot of the gangs at, so there's  
19 Surenos, Burquenos. There's all sorts of gangs.  
20 But the unit I lived in was primarily SNM.

21 Q. That's my next question: Were you living  
22 with SNM Gang members?

23 A. Yes.

24 Q. Can you tell us a little bit about what  
25 you were doing? You already mentioned that you were

1 a soldier involved in narcotics activity. What  
2 specifically were you doing when you first became an  
3 SNM Gang member?

4 A. I was running narcotics through the  
5 facilities. I was known to hit heroin. I was  
6 hitting heroin, meth, cocaine, and within the  
7 prison, so I had a reputation of being an  
8 established drug dealer within the system.

9 Q. Okay. What do you mean, "hitting"?

10 A. By "hitting," I mean by smuggling in  
11 through visits or using fellow officers to bring me  
12 drugs.

13 Q. Were you yourself a drug user?

14 A. No, ma'am.

15 Q. Did you ever use on occasion?

16 A. Very rarely. I did use.

17 Q. Now, you mentioned heroin, and what were  
18 the other drugs?

19 A. Heroin, cocaine, methamphetamines, and  
20 later on Suboxone. But prior to that, Suboxone  
21 wasn't even around back then, so...

22 Q. And who would you -- when you would get  
23 the drugs, what would you do with them? I mean,  
24 would you sell them? Would you use them? I mean,  
25 what would you do with them?

1           A.    I sold them. I ran, I guess you'd say, a  
2 very well business, and the narcotics -- I'd sold  
3 them, I'd send money home to my family, I'd take  
4 care of my wife at the time. I was paying the  
5 house, car payments, everything. I sold them  
6 in-house for canteen and everything that I needed.  
7 For profit. That was my main thing. I'd rather  
8 have money than use. That's another big reason I  
9 don't use. I like to live good. So I pretty  
10 much -- and I want to take care of my family.

11           Q.    Okay. Now, you mentioned "canteen." What  
12 did you mean by "canteen"?

13           A.    Canteen is items that we purchase off of a  
14 canteen list. It's like a store. They sell soups,  
15 soda pops, candy bars, Little Debbies. It's pretty  
16 much the way we stay fed within the system other  
17 than the state trays that they give us.

18           Q.    And you mentioned you were successful?

19           A.    Yes, ma'am.

20           Q.    I'm going to fast-forward a little bit  
21 just briefly to December 3 of 2015. Do you recall  
22 that date?

23           A.    Yes, ma'am.

24           Q.    And what happened on that date?

25           A.    About 5:00 in the morning the STIU was



1 knocking at my door saying "Emergency transport." I  
2 had no idea where I was going. I was in Southern  
3 New Mexico, right near Cruces, at the prison here.  
4 They're knocking at my door about 5:00 in the  
5 morning, like I say. They handcuffed me, shackled  
6 me up, put me in a little van, ended up in  
7 Albuquerque at the Federal Courthouse, and got  
8 interviewed, processed, I guess you could say, by  
9 the marshals. They processed us.

10 Then the following day is when we got our  
11 arraignment from these charges right here on this  
12 RICO case.

13 Q. Is it fair to say that on December 3 you  
14 were arrested in the federal case that you're here  
15 in court on?

16 A. Yes, ma'am.

17 Q. Okay. At the time that you were arrested,  
18 did you have money in your Correction account?

19 A. Yes, ma'am, I did.

20 Q. Okay. Approximately how much money did  
21 you have?

22 A. A little over \$25,000.

23 Q. And how did you get that money?

24 A. From selling drugs.

25 Q. And where did you sell drugs from?

1           A.     Both inside the walls, to other convicts;  
2     and on the streets. I was running drugs on the  
3     streets.

4           Q.     Would you supply them to SNM Gang members?

5           A.     Yes, ma'am.

6           Q.     Now, you mentioned that you were in South,  
7     Level 5. Did you stay there, or did you eventually  
8     get moved?

9           A.     What time period?

10          Q.     Well, where did you go from there, I  
11     should say?

12          A.     In 2009?

13          Q.     Yes.

14          A.     I was there in 2009. I'd only -- they  
15     made me a brother of the SNM in the beginning of  
16     March. By the end of March I was transferred to the  
17     Northeast New Mexico Detention Facility, which is in  
18     Clayton, New Mexico.

19          Q.     Then where did you go after Clayton?

20          A.     From Clayton I went back to the South, in  
21     Santa Fe, and that's where I did a year waiting for  
22     housing in Southern New Mexico, here in Cruces, the  
23     SNM unit.

24          Q.     All right. And eventually did you make  
25     your way down to Southern?

1 A. Yes, ma'am.

2 Q. When did you go to Southern?

3 A. 2011, June, July-ish, I want to say, of  
4 '11.

5 Q. All right.

6 A. I could be wrong, but I want to say June  
7 or July of 2011.

8 Q. Is when you came down to Southern New  
9 Mexico?

10 A. Yes, ma'am.

11 Q. Now I'm going to ask you about a few  
12 people. Do you know Anthony Baca?

13 A. Yes, ma'am.

14 Q. Do you see him in the courtroom?

15 A. Yes, ma'am.

16 Q. All right. And where is he seated?

17 A. Behind Mr. Villa.

18 Q. What is he wearing?

19 A. Looks like a suit.

20 Q. What color is the suit?

21 A. Grayish, darkish, with a tie. Bald head.

22 MS. ARMIJO: May the record reflect  
23 identification of Mr. Baca?

24 THE COURT: The record will so reflect.  
25

1 BY MS. ARMIJO:

2 Q. When did you meet Anthony Baca?

3 A. At Southern New Mexico in Cruces. It was  
4 probably 2013 when I first was introduced to him.  
5 I'd always heard of him, but I finally got  
6 introduced to him in about 2013.

7 Q. And you say you had heard of him before?

8 A. Yes, ma'am.

9 Q. And when you met him, did you know what  
10 his position, if any, was in SNM?

11 A. Yes, ma'am, I knew him to be the big dog  
12 of the SNM, the leader of it. He's pretty much --  
13 in military terms, he would have been the general,  
14 and on down. He's the main one in the SNM. He had  
15 the keys for all of the SNM.

16 Q. You mentioned he was the big dog. Do you  
17 know what his nickname was?

18 A. Pup.

19 Q. All right. Now, going to when you met  
20 him, did you have an opportunity to get to know him?

21 A. A little. We had encounters here and  
22 there. When he first got there, we were on tier  
23 time, which means the prison, the pod we're living  
24 in, had two tiers: Top tier, bottom tier. So when  
25 the bottom tier is out, the top tier is locked down,

1 and so forth. I lived on top, he lived on the  
2 bottom tier. So every now and then I'd make it to  
3 his door, and we'd have conversations and stuff. I  
4 looked up to him. He was my big homie. He was the  
5 one driving the car.

6 Q. What do you mean "driving the car"? What  
7 are you referring to?

8 A. He was leader of the SNM. He was highest  
9 that it gets at that point in time. There is no one  
10 above him.

11 Q. Did he ever tell you about any plans that  
12 he had for the SNM?

13 A. He did. He broke down a little what he  
14 wanted. He had plans. He wanted to move it in the  
15 right direction, because during the past there was  
16 many fractions amongst us, and he would talk about  
17 it. He wanted to break it down into rayos of -- the  
18 Zia is our sign, the Zia symbol. And each ray that  
19 comes off, he wanted to break it into the counties,  
20 where a certain county would have a couple -- let's  
21 say, I'm going to use ours -- would be Luna, Grant,  
22 and Hidalgo County would be, and they'd have their  
23 own sergeant. He had a plan to move us all forward  
24 and repair us. Like I say, we were real fractioned.  
25 We had a bunch of fractions amongst us and he was

1 trying to repair all that.

2 Q. Now, you said there were some factions  
3 amongst you. Who is the "us"? I should say, who  
4 was the "us"?

5 A. Other SNM members were constantly arguing  
6 with -- amongst each other, say, oh, well --

7 Q. I don't want to get into what they say.  
8 But I guess, let me ask this. Were there different  
9 factions at various times throughout the time that  
10 you had been with the SNM?

11 A. Yes, ma'am.

12 Q. But would you still consider it one  
13 organization?

14 A. Yes, ma'am, it is.

15 Q. And the plan that Mr. Baca, Anthony Baca,  
16 spoke to you about -- did you buy into that plan?

17 A. I did.

18 Q. And why is that?

19 A. Because I looked up to him. And like I  
20 say, when he was explaining it to me, it made a lot  
21 of sense. And at that point in time I wanted to see  
22 the SNM move forward. You know what I mean? And so  
23 the way he broke it down and explained everything to  
24 me, it was a good plan where everyone could get back  
25 on track, on the same agenda, and move forward and

1 actually achieve objectives and be more than just  
2 in-house, more where we could expand our horizons on  
3 the street and expand the enterprise out there on  
4 the streets, as well.

5 Q. Did you supply Anthony Baca with drugs?

6 A. Yes, ma'am. I would give him Suboxone  
7 before.

8 Q. Now, I'm going to show you some  
9 photographs.

10 MS. ARMIJO: Your Honor, I'm going to move  
11 for the admission of Exhibits 491 and 763, 764 and  
12 765, without objection, I believe.

13 THE COURT: Any objection from the  
14 defendants?

15 MR. VILLA: No, Your Honor.

16 THE COURT: All right. Not hearing any  
17 objection, the Court will admit Government's  
18 Exhibits 491, 763, 764 and 765.

19 (Government Exhibits 491, 763, 764, and  
20 765 admitted.)

21 BY MS. ARMIJO:

22 Q. All right. If you can please start by  
23 displaying Exhibit 491. Mr. Martinez, do you  
24 recognize this photograph?

25 A. Yes, ma'am.

1 Q. How so?

2 A. Well, first of all, I'm in it, and I  
3 remember taking it. It was taken here in Southern  
4 New Mexico, here in Cruces.

5 Q. And where are you in the photograph?

6 A. I'm the one that's kneeling down.

7 Q. Okay. Is that you that I drew a red line  
8 under?

9 A. Yes, ma'am.

10 Q. All right. And who is this individual  
11 here?

12 A. That would be Anthony Baca.

13 Q. And I drew -- for the record, I drew an  
14 arrow to the person on the left of the photograph.  
15 And who is this person here in the middle?

16 A. That's Javier Molina.

17 Q. Javier Molina?

18 A. Yes, ma'am.

19 Q. And who is the other individual in the  
20 photograph?

21 A. That would be Jeffrey Madrid.

22 Q. Are all those people SNM Gang members?

23 A. Yes, ma'am.

24 Q. And do you recall approximately when this  
25 photograph was taken?



1           A.    I want to say in 2013. I can't really say  
2 the months, give or take, but I know it was probably  
3 the middle of 2013.

4           Q.    All right. And I'm going to show Exhibit  
5 Number -- and then there's a couple of other  
6 pictures while we're showing pictures. Let's go to  
7 Exhibit Number 763.

8                   All right. Are you in this photograph as  
9 well?

10          A.    Yes, ma'am.

11          Q.    And where are you?

12          A.    I'd be the top left, standing.

13          Q.    All right. Is that you there? I drew an  
14 arrow on the top left side.

15          A.    Yes, ma'am.

16          Q.    Okay. And who is this individual here  
17 that I drew an X on? He's two persons down from you  
18 in the photo.

19          A.    That would be Jake Armijo.

20          Q.    And who is the person with his arms  
21 crossed next to Jake Armijo?

22          A.    Roy Rogers Montano.

23          Q.    And where was this picture taken?

24          A.    This was also taken at the Southern New  
25 Mexico Correctional Facility here in Cruces.

1 Q. Are the people in this photograph SNM Gang  
2 members, or are there some that are just associates?

3 A. They're all confirmed SNM Gang members.

4 Q. All right. I'm going to go to Exhibit  
5 Number 764. And are you in this photograph, as  
6 well?

7 A. Yes, ma'am.

8 Q. And which one is you?

9 A. I'd be the bottom left one in the front  
10 row.

11 Q. Okay. Holding up your fingers in the air?

12 A. Like a "what's up" sign, right.

13 Q. I was going to say a peace sign.

14 A. Peace. What's up.

15 Q. A "what's up" sign. There on the bottom  
16 left. And who is next to you on the bottom?

17 A. Jerry Montoya.

18 Q. And are the other individuals -- where was  
19 this picture taken?

20 A. This was also at the Southern New Mexico  
21 Correctional Facility here in Cruces.

22 Q. And what are the bottom ones?

23 A. Those are all drawings done by another SNM  
24 Gang member, Steven Morales; he had drawn those.

25 Q. Is Steven Morales in this picture?

1 A. Actually, he's not, ma'am.

2 Q. All right. He drew that?

3 A. Yes.

4 Q. All right. Which I believe has a Duke  
5 City; is that correct?

6 A. Yes, ma'am.

7 Q. And I'm going to say a cartoon figure of  
8 Our Lady of Guadalupe, maybe?

9 A. Yes, ma'am.

10 Q. And a little gangster?

11 A. Yes, ma'am.

12 Q. And was he a Lobos fan?

13 A. Actually, no. The Duke City and the Lobos  
14 were drawn for Mr. Jerry Montoya, who is from  
15 Albuquerque, New Mexico.

16 Q. All right. I won't hold that against him.

17 Now, let's go to Exhibit Number 765. Are  
18 you in this photograph, as well?

19 A. Yes, ma'am.

20 Q. And where are you?

21 A. I'm the bottom right, the one kneeling.

22 Q. All right. Is that you?

23 A. Yes, ma'am.

24 Q. And when was this picture taken?

25 A. This one was also taken in 2013.

1 Q. And do we see -- who is the person on the  
2 top here that I'm circling in the middle?

3 A. That would be Javier Molina.

4 Q. You were friends with Javier Molina?

5 A. Yes, I was very good friends with him.

6 Q. Now, are you also -- do you know Daniel  
7 Sanchez?

8 A. Yes, ma'am.

9 Q. Do you see him in the courtroom today?

10 A. Yes, ma'am.

11 Q. Where is he?

12 A. He's in the first chair on this first  
13 table over here.

14 Q. Is he wearing a jacket?

15 A. No, he's wearing glasses, shirt, and a  
16 tie.

17 MS. ARMIJO: May the record reflect  
18 identification of Daniel Sanchez?

19 THE COURT: The record will so reflect.

20 BY MS. ARMIJO:

21 Q. Does he look different today than when you  
22 knew him?

23 A. He's got a little more hair right now, but  
24 other than that, he's looking all right. Actually,  
25 a pretty good haircut, one of his better ones.

1 Q. When did you meet Daniel Sanchez?

2 A. I met him when he first got down to  
3 Cruces. I'd heard about him, as well, through  
4 Javier Molina, and actually a bunch of other  
5 members. But I had the opportunity to meet him in  
6 Cruces when he got there.

7 Q. And when he got there, where did he --  
8 where was he housed?

9 A. He was --

10 Q. Meaning was he housed in your pod?

11 A. Yes, ma'am.

12 Q. And what was your relationship with Mr.  
13 Sanchez?

14 A. Could you -- what do you mean?

15 Q. Well, I mean, did you get along with him?

16 A. We've had our disagreements in the past.  
17 We didn't always see eye to eye on a lot of stuff,  
18 but I --

19 Q. Do you know what his position was?

20 A. He was the leader. He was the key-holder  
21 of that pod.

22 Q. What do you mean by key-holder?

23 A. He was the -- in the SNM, there's  
24 considered a tabla, which is like a panel of  
25 different members for each -- and they make the

1 decisions. He was in charge of our pod.

2 Q. So was he the leader in the pod that you  
3 were staying?

4 A. Yes, ma'am.

5 Q. And you mentioned that you had issues with  
6 him. Even though you had issues with him, given  
7 that he was -- you said that you're a soldier, and  
8 he's a leader. Would you still follow him, follow  
9 his --

10 A. I have to. According to SNM law and the  
11 codes we follow, I have to.

12 Q. Do you have an SNM tattoo?

13 A. Yes, ma'am, I do.

14 Q. Did you always have that SNM tattoo?

15 A. No, I didn't. It's -- in order to get the  
16 actual SNM, you have to have put in work. By work,  
17 I mean by stabbing someone, trying to kill someone,  
18 or actually killing them.

19 Q. Now, I'm going to -- when you were  
20 arrested in this case, I believe you said it was  
21 December of 2015, did you have an SNM tattoo?

22 A. No, ma'am. I have many Zias on me, but  
23 none of them actually contained the SNM in it.

24 Q. Okay. What's the significance of that?

25 A. The SNM is -- it's like your patch of

1 honor. Once you finally do put in work, it's an  
2 honor to actually get the SNM put on you. Having  
3 the Zia, like I say, the Zia is our flag. We all  
4 represent the state, so the Zia is a very sacred  
5 image. But to actually have the SNM means that  
6 you've put in work, that you've actually gone  
7 through and ordered hits or sanctioned hits.

8 Q. And what SNM tattoo did you get on you  
9 since your arrest in this case?

10 A. I received -- I was in Torrance County,  
11 out in Estancia, in the federal hold, and I -- it's  
12 an undercover one. It's through the roses right  
13 here. I have an S, then the NM there in the  
14 shading. And I was allowed to actually get it  
15 because I put in work.

16 Q. All right. I'm going to show Exhibit  
17 Number 562, which I believe is in evidence.

18 MR. JEWKES: Your Honor, I'm sorry, would  
19 Ms. Armijo repeat that? She turned away.

20 MS. ARMIJO: I'm sorry, 562.

21 BY MS. ARMIJO:

22 Q. Who that is a picture of?

23 A. That's me.

24 Q. I notice in this picture that your arms  
25 from your elbow down do not have tattoos; is that

1 correct?

2 A. Yes, ma'am.

3 Q. And if you can, can you stand up for the  
4 jury? Okay. It now appears that you have tattoos  
5 from your elbows down?

6 A. Yes, ma'am.

7 Q. Okay. You can sit down. And you  
8 indicated -- who gave you those tattoos?

9 A. Another SNM Gang member, Christopher  
10 Chavez.

11 Q. Were you supposed to be getting tattoos  
12 in, you said, Torrance?

13 A. No. It's against the rules. You're not  
14 supposed to get any kind of tattoos while you're  
15 incarcerated. If I was caught, I could have got a  
16 write-up a disciplinary infraction, I would have to  
17 go to Seg, possibility of Seg time.

18 Q. Now, I'm going to show Exhibit Number 564.  
19 And is that your back?

20 A. Yes, ma'am.

21 Q. Who gave you that that tattoo?

22 A. Dan Dan Sanchez. Daniel Sanchez.

23 Q. Okay. You said Dan Dan. Does Daniel  
24 Sanchez have a nickname in the gang?

25 A. Dan Dan.



1 Q. And when did he give you this tattoo?

2 A. We were in blue pod right there in  
3 Southern New Mexico, probably, I'd say, 2013, end of  
4 2013.

5 Q. And is there anything significant about  
6 this as you look at it as far as in relationship to  
7 SNM?

8 A. Yes. Actually, Dan wouldn't allow me to  
9 get the S, because I hadn't put in work at that  
10 time. But in significance, the number 19 is very --  
11 it's one of our numbers. S is the 19th letter in  
12 the alphabet. So Sindicato. So in the gun belt of  
13 the charronda, top left side of this picture there's  
14 19 bullets representing the S. But he wouldn't give  
15 me the actual S, because I hadn't put in work yet.

16 Q. And is that what he told you?

17 A. Yes, ma'am.

18 Q. And I circled a gun belt. Is that the gun  
19 belt that you were referring to?

20 A. Yes, ma'am.

21 Q. Now, when you say put in the work, you  
22 talked about all your narcotic activities. Is there  
23 a different type of work that you need to put in?

24 A. Yes, ma'am, the S is, like I said and  
25 opened with, they're known for violence. In order

1 to put in work and get the patch of an actual SNM,  
2 you got to commit acts of violence, whether it be --  
3 the objective is always to try to kill an individual  
4 that's marked for a hit. So you stab them, strangle  
5 them, whatever the case may be. So when I'm saying  
6 to put in work, that's what I mean, to actually put  
7 in an act of violence.

8 Q. Now, you indicated that Daniel Sanchez had  
9 done that tattoo for you, but you also had said you  
10 weren't the best of friends with him.

11 A. No.

12 Q. So how is it that he did the tattoo on  
13 your back?

14 A. Well, it was -- we had our disagreements  
15 in the past, we had altercations in the past. And  
16 it was his way, I guess, you could say he -- like an  
17 offering, All right, I'll do the work on you. He  
18 was starting out -- he had barely started tattooing,  
19 really. I'm one of actually his -- not his  
20 first-first person he tattooed on, but one of his  
21 first. So he said, "Let me work on you."

22 And I said, "All right. I'll let you work  
23 after you do a few people. These are going to be on  
24 me for the rest of life." I said, "You've got to  
25 get a little better."

1           So he worked on some people, and then it  
2   came about where he got good enough, and I let him  
3   work on my back.

4           Q.    Again, is this allowed within the New  
5   Mexico Corrections Department?

6           A.    No, ma'am. Once again, if we would have  
7   got caught, we could have both ended up with  
8   disciplinary infractions, which could have led us to  
9   many sanctions, from severe, going to segregation,  
10   to something as simple as loss of commissary  
11   privileges or phone call privileges.

12          Q.    Carlos Herrera. Are you familiar with  
13   that individual?

14          A.    Yes, ma'am.

15          Q.    Do you see him in the courtroom?

16          A.    Yes, ma'am.

17          MS. BHALLA: Your Honor, we stipulate to  
18   his identity.

19          THE COURT: Does that work for you, Ms.  
20   Armijo?

21          MS. ARMIJO: Yes, Your Honor. Thank you.

22   BY MS. ARMIJO:

23          Q.    And were you housed at Southern with  
24   Carlos Herrera?

25          A.    Yes, ma'am.

1 Q. Was he in the same pod or a different pod?

2 A. He was in an adjoining pod to us. He was  
3 in the pod next door to us.

4 Q. Did you sell drugs to him?

5 A. Yes, ma'am.

6 Q. Rudy Perez. Are you familiar with Rudy  
7 Perez?

8 A. Yes, ma'am.

9 Q. Do you see him in the courtroom?

10 A. Yes, ma'am.

11 MR. VILLA: We'll stipulate, Your Honor.

12 THE COURT: Does that work, Ms. Armijo?

13 MS. ARMIJO: Yes, Your Honor. Thank you.

14 BY MS. ARMIJO:

15 Q. Was he in the same pod as you?

16 A. Yes, ma'am.

17 Q. Was -- did you -- let me go back to Carlos  
18 Herrera. The pod that Carlos Herrera was in, was  
19 that an SNM pod, as well?

20 A. Yes, ma'am. The unit we lived in was all  
21 SNM members. It consisted of three pods which  
22 housed 48 cells.

23 Q. And I forgot to ask, but was Carlos  
24 Herrera an SNM Gang member?

25 A. Yes.

1 Q. Rudy Perez. Was he an SNM Gang member?

2 A. Yes, ma'am.

3 Q. And did you know Rudy?

4 A. Yes, ma'am, I do. Actually, he's -- I  
5 consider him a friend.

6 Q. Now, at the time that he was at -- that  
7 you were at Southern with him, was he there in the  
8 same pod as you most of the time, if you recall?

9 A. Yes, ma'am.

10 Q. Okay. Did you do anything for Mr. Perez?

11 A. I did. Like I say, I consider Rudy a true  
12 friend. I liked him as an individual. You guys  
13 have all seen he's not in the best of shape. And  
14 ever since I've known him, he's always had medical  
15 issues.

16 And I took a liking to him. I helped him  
17 out with canteen when he didn't have money. I ran a  
18 store, which by that I mean I bought commissary  
19 items and ran it just like any little Allsup's, or  
20 whatever, you guys would walk into it. Anyone from  
21 the unit could come to me, "Hey, I need to get two  
22 soups."

23 "All right, I'll give two soups. You give  
24 me three back."

25 I ran it on a get-two-pay-back-three. So

1 Rudy didn't always have money. I helped him out  
2 with canteen.

3 Q. Would you front it to him, or actually  
4 give it to him?

5 A. I've done both. I've given him food. He  
6 always would try to come back and pay me. You know  
7 what I mean? He's a good guy. Me and him are good  
8 friends. Like I say, I've given him food before.  
9 He'd come back and try to pay me for some food.  
10 I've given him drugs before because he doesn't  
11 always have a lot of money or whatever. Like I  
12 said, I liked him. I'd look out for him.

13 Q. Did you ever go out to rec with him?

14 A. Yes, ma'am, a few times.

15 Q. So he would on occasion go out to rec?

16 A. Yes, ma'am.

17 Q. And you indicated that -- would you give  
18 him drugs on occasion?

19 A. Yes, ma'am.

20 Q. What drugs would you give him?

21 A. Mainly Suboxone.

22 Q. And is he an SNM Gang member?

23 A. Yes.

24 Q. I'm going to go specifically now to March  
25 7 of 2014. Do you recall that day?

1 A. Yes, ma'am.

2 Q. Now, you were already -- you indicated  
3 that you were in the same pod as Rudy Perez; is that  
4 correct?

5 A. Yes, ma'am.

6 Q. Okay. I'm going to mention some people,  
7 and tell me if you know them and if they were in  
8 your pod. Mario Rodriguez?

9 A. Yes.

10 Q. Do you know Mario Rodriguez?

11 A. I know Mario very well. We grew up  
12 together.

13 Q. Was he in your same pod?

14 A. Yes, ma'am.

15 Q. What's his nickname?

16 A. Blue.

17 Q. By the way, what's your nickname?

18 A. Red. Go figure.

19 Q. And do you know why you're called Red?

20 A. Why I'm -- well, it's kind of stuck with  
21 me since I was born. I can't outrun it. I wasn't  
22 lucky enough to get a cool nickname. They said,  
23 "Oh, Red," then it stuck ever since I was a little  
24 kid. So I think it has something to do with the  
25 hair.

1 THE COURT: Ms. Armijo, would this be a  
2 good place for us to take our morning break?

3 MS. ARMIJO: Yes, Your Honor. Thank you.

4 THE COURT: We'll have a late lunch, so  
5 we'll take our break now. We'll be in recess for 15  
6 minutes.

7 (The jury left the courtroom.)

8 THE COURT: Deputy Mickendrow gave me a  
9 report about the contact yesterday between Gloria  
10 Molina and one of the jurors, where she offered her  
11 a cough drop. So I'll mark this as an exhibit to  
12 Clerk's Exhibit M, as in Mary. If y'all want to  
13 take a look at it, get more detail there. But it  
14 looks like in the bathroom she offered her a cough  
15 drop, if y'all want to look at that. If I don't  
16 hear anything from you, we'll just keep moving.  
17 Otherwise y'all can raise it after the break.

18 All right. We'll be in recess for between  
19 15 minutes.

20 (The jury entered the courtroom.)

21 THE COURT: Got your medicine back there?  
22 Good. All right.

23 Mr. Martinez, I'll remind you that you're  
24 still under oath.

25 Ms. Armijo, if you wish to continue your



1 direct examination of Mr. Martinez, you may do so at  
2 this time.

3 MS. ARMIJO: Thank you, Your Honor.

4 THE COURT: Ms. Armijo.

5 BY MS. ARMIJO:

6 Q. I believe you were talking about March 7,  
7 2014. Different people in your pod. Jerry Armenta?

8 A. Yes, ma'am.

9 Q. And what about Jerry Montoya?

10 A. Yes, ma'am.

11 Q. Daniel Sanchez?

12 A. Yes, ma'am.

13 Q. Ronald Sanchez?

14 A. Yes, ma'am.

15 Q. And I believe we already talked about Rudy  
16 Perez?

17 A. Yes, ma'am.

18 Q. Are you aware of whether or not Carlos  
19 Herrera was in the unit?

20 A. He was in the unit. He was in the pod  
21 next to us.

22 Q. Now, on March 7, 2014, did you have any  
23 special assignments that you were doing for  
24 Corrections that day?

25 A. I had a job which was -- we'd -- every

1 morning we'd go -- or my job was to refurb  
2 wheelchairs. It was called Wheels for the World.  
3 It was a program where we went and refurbished old  
4 wheelchairs from the ground up, everything, and we'd  
5 fix them up. And it's actually a really great  
6 program. After they're fixed, they pack them up,  
7 put them in a semi, and they'd actually ship them to  
8 third-world countries for the less fortunate. You  
9 know what I mean? So that was my job at the prison.

10 Q. And is that something that you volunteered  
11 for?

12 A. Yes. Actually, the -- that program was  
13 given to the SNM. It was a pilot program. It was  
14 brand new. They had just started that program at  
15 the prison. And it opened up with eight  
16 individuals, and they were all selected from the SNM  
17 unit, which was 1-A.

18 Q. And were you one of those persons?

19 A. Yes, ma'am.

20 Q. And did you work the wheelchair program  
21 that day?

22 A. Yes, ma'am.

23 Q. Now, do you recall coming back from the  
24 program in the afternoon?

25 A. Yes.

1 Q. Let me ask you this. What were your hours  
2 when you worked at the program?

3 A. The CO would usually come pick us up  
4 around 7:30 a.m. and we'd stay there all day long.  
5 We'd eat lunch. We worked out of an old auto bay.  
6 We'd eat lunch there. Our day would usually --  
7 workwise would end a little after 3:10, 3:15.  
8 They'd strip-search us, everything. And then by the  
9 time we got back to the unit, it was usually -- once  
10 they got done strip-searching everybody, it was  
11 about 3:40, 3:45 ish.

12 Q. Why were you strip-searched after being in  
13 the program?

14 A. Well, in that program you're using a lot  
15 of tools, a lot of sharp metal. You have chisels,  
16 screwdrivers, saws, parts of actual metal from  
17 medical equipment. So they wanted to strip-search  
18 us to make sure that we weren't trying to smuggle  
19 anything back to the unit.

20 Q. And would they strip-search you or go  
21 through a metal detector, both?

22 A. It was an actual physical search where we  
23 take off all our clothes and hand them to the COs.  
24 They check all your clothes, squat, cough, make sure  
25 you're not trying to hide anything in there. So it

1 was a physical search.

2 Q. You mentioned weapons. Did you have a  
3 shank that you kept -- like, I'm not talking about  
4 that day -- just in general, while you were at  
5 Southern?

6 A. Yes, ma'am.

7 Q. Was that common within the SNM?

8 A. It's very common. It's very common. In  
9 fact, that's actually one of the first things they  
10 teach us when we become SNM members, is how to make  
11 weapons, how to make shanks. So pretty much  
12 everyone -- anytime we need one, if they didn't have  
13 one, they knew how to make them. So it's a common  
14 practice to have shanks.

15 Q. When you left the wheelchair program that  
16 day, did somebody meet with you and have a  
17 discussion?

18 A. When I got home from work, my pod were all  
19 outside. It was their rec time. We had a little  
20 yard right there by our unit. They were out there.  
21 So when I walked in, Mario Rodriguez was waiting for  
22 me, and he engaged me in conversation, small talk,  
23 and then that's -- he told me that some paperwork  
24 had came in.

25 Q. Okay. And "paperwork." What did you take

1 that to mean?

2 A. Paperwork is referring to any kind of  
3 police reports or statements that you give any  
4 correctional officers or any law enforcement agency.

5 Q. Now, did he immediately talk to you about  
6 the paperwork, or did he request something first of  
7 you?

8 A. No, well, when we got there, small talk,  
9 like, "How was your day?" I mean, and it caught me  
10 off guard. Because like I mentioned earlier, I  
11 really don't get high, and that was one of the  
12 things he says, "Hey, carnal, go get high."

13 I was like, "Go what?"

14 He says, "Go get high."

15 I said, "No, man, you know I don't mess  
16 around like that."

17 He says, "Man, just please go get high."

18 "No, I'm not going to get high. If you  
19 want to get high, just ask me. I'll give you some."

20 He's, like, "No, it ain't even that."

21 And that's when he sat me down and says,  
22 "Let me explain to you what's going on," and that's  
23 when he explained about the paperwork getting there.

24 Q. And what paperwork was that?

25 A. It was paperwork on Javier Molina. We

1 were actually waiting on two sets of paperwork, and  
2 only one showed up, which happened to Javier Molina.

3 Q. What other paperwork were you waiting for?

4 A. We were waiting on paperwork on Jerry  
5 Montoya.

6 Q. And you say "we." Who are you referring  
7 to?

8 A. The SNM.

9 Q. Now, you said that the paperwork on Javier  
10 Molina showed up. And what did you take that to  
11 mean?

12 A. That the paperwork showing that he had  
13 cooperated at some point with any kind of law  
14 enforcement, whether it be a police force out on the  
15 streets, or even institutional, all the hidden  
16 little kites. When I say "kite," little notes that  
17 they pass correctional officers, such as the STIU  
18 and stuff. So there was proof that he had informed  
19 on some -- in the criminal world, it's bad to tell  
20 on people. It's -- oh, wow, that's what I'm doing  
21 now. It's -- in that world, any kind of paperwork,  
22 if you've ever informed on anybody in any kind of  
23 crime, it's punishable by death in the code of  
24 conduct that we lived.

25 Q. So once he said the paperwork was here on

1 Javier Molina, what was your reaction to that?

2 A. I was sad.

3 Q. Javier Molina -- was he a friend of yours?

4 A. He was a very good friend of mine. You  
5 know what I mean? At first, when he said, "The  
6 paperwork is here," right away I said, "All right,  
7 well" -- because we were waiting on both. So when  
8 he said paperwork, I assumed both of them. I said,  
9 "Well, if I've got to go, I'll go get Jerry."

10 He says, "No." That's when he told me  
11 only one set showed up, and it was Javier. And I  
12 was sad. I was sad. And I was, like -- he just  
13 explained it where he was like, "Man, the paperwork  
14 is here, Dan -- we've seen it, me and Dan have seen  
15 it. We've gone over it. It's real."

16 Because you've got to make sure the  
17 paperwork is real. You can't just make moves  
18 without -- so Daniel and Mario had both seen the  
19 paperwork and said it was real. And that's when he  
20 told me that, "Dan wants you to go." I mean, it was  
21 my time to start putting in work. And by "work,"  
22 committing an act of violence. Because like I said,  
23 I'd been drug-dealing, but actual put in violence  
24 for the SNM.

25 Q. So you were told that Daniel Sanchez

1 wanted you to go?

2 A. Yes, ma'am.

3 Q. Now, was there a plan specifically of what  
4 your role would be in this?

5 A. Yes, we're talking, he's further  
6 explaining it. He says, "Dan wants you to go."

7 And I said, "Man, why?"

8 He says, "Well, just -- you've got to go,  
9 Dan is making you go."

10 I said, "All right. What do I got to do?"

11 And he said, "Dan just wants you to go in  
12 there and beat him up."

13 Prior to this, I've had training in mixed  
14 martial arts, my military MCMAP training, which is  
15 Marine Corps Martial Arts Program. So I've had  
16 training in hand-to-hand combat.

17 So he says, "Daniel knows you can knock  
18 him out. He wants you to go in there, knock him  
19 out, where he can't get out of the cell. And that's  
20 when he says Jerry Montoya and Jerry Armenta are  
21 going to go in and stab him." He said, "We've made  
22 fierros." And by "fierros," I mean shanks. "We're  
23 going to give them to them, and they're going to go  
24 in and stab him. All you got to do is go in there  
25 and knock him out, make sure you knock him out good



1 enough where he can't leave the room."

2 Q. And what did you do at that point?

3 A. I was in shock. So I was, like, "Well,  
4 yeah, I think I'm going to take you up on that. I  
5 think I'm going to go get high now." You know what  
6 I mean?

7 Yeah, that was my buddy. I didn't want to  
8 see him dead. I didn't want to see that happen.  
9 But I knew in the life that we chose, the life that  
10 we were living, that it's either you do the work,  
11 and you don't have a say-so when you're at my level,  
12 just being a soldier. I had to follow orders.

13 Q. Now, are you aware of whether or not  
14 Javier Molina had a shank?

15 A. Yes, he did.

16 Q. Did he have a shank that day?

17 A. He did. He actually -- he had a shank  
18 made out of a handle of a crutch. And during this  
19 conversation with Mario, we're talking. And like I  
20 said, it ended like, "Yeah, I think I'm going to get  
21 high."

22 He said, "You're going to be all right.  
23 I've been through it. You'll be all right."

24 So as I'm walking up the stairs, the rest  
25 of the pod starts coming in from yard. As they're

1 coming in -- like I say, me and Javier were really,  
2 really good friends. He comes up, "Hey, brother,  
3 what's going on, carnal? Are you doing all right?  
4 How was work?"

5 "It was good. It was good."

6 I couldn't make eye contact with him at  
7 that time, because I knew what was going to happen.  
8 So he's, like, "Work was good." You know what I  
9 mean, small talk. "It was real good."

10 And he says -- you've got to remember, I  
11 got home about 3:40, 3:45. At 4:00 there is a count  
12 where they lock us in our rooms to count all the  
13 people in prison, make sure no one has left. So  
14 they come in, I'd say, about a little after 3:50 or  
15 so, give or take, or a little afterwards.

16 Q. This is after your conversation --

17 A. This is right after, when they're coming  
18 in, after my conversation with Mario.

19 So he comes in all sweaty from playing,  
20 whatever, handball, or whatever he was doing  
21 outside. He says, "I'm going to take a shower. Can  
22 you hold this for me?"

23 MR. JEWKES: Your Honor, we would object  
24 to the narrative fashion.

25 THE COURT: Why don't you break it up a

1 little more into question and answer.

2 BY MS. ARMIJO:

3 Q. And so you said that Mr. Molina asked you  
4 to hold something?

5 A. Yes, he asked me to hold his shank,  
6 actually. He had a shank on him. It was tied  
7 inside his waistband.

8 Q. What did he do with it?

9 A. He took it out and gave it to me. So he  
10 gave it to me. I put it in my waistband. And he  
11 proceeded into his room, got all his stuff for the  
12 shower, and went and took a shower.

13 Q. And then where did you go at that point?

14 A. At that time I was still going towards my  
15 room. So I'm in my room. I start making a coffee,  
16 getting nervous. My nerves are going.

17 Q. And did you at that point have Javier  
18 Molina's shank with you still?

19 A. Yes.

20 Q. And when you go into your room, at that  
21 point is count going to begin soon?

22 A. Yeah. We're just waiting, pretty much, on  
23 the COs to come in and start count. So they came in  
24 right away, a few minutes after the fact. He was  
25 still in the shower, and that's when the COs came in

1 to start doing count.

2 Q. And then are you locked in your cell  
3 during count?

4 A. Yes, ma'am, we're locked in from 4:00 to  
5 5:00, a little after 5:00 sometimes. It doesn't  
6 always clear exactly at 5:00. It's whenever they're  
7 done with all the counts, get all the paperwork  
8 turned in. But the initial count is supposed to be  
9 from 4:00 to 5:00.

10 Q. Now, you mentioned that your part was  
11 to -- you were instructed that you were to hit  
12 Javier Molina, and then Armenta and Montoya were to  
13 come in. Was Javier Molina -- what was his stature  
14 like in comparison to you and Armenta, Montoya?

15 A. He's shorter than me, taller than the  
16 Jerrys, both Montoya and Armenta. He had me -- he  
17 was real stocky, he was real wide. He was a good --  
18 I was weighing about 170, so he had me about a good  
19 40, 45 pounds, stockywise. He was a little  
20 aggressive. I mean, he had that aggressive build.  
21 You could tell, like, you know what I mean, he's  
22 thick, and he had boxed in the past and stuff, so he  
23 had a little heavy stature.

24 MR. JEWKES: Your Honor, once again, he's  
25 testifying in a narrative fashion.

1 THE COURT: Just a little more Q and A.

2 BY MS. ARMIJO:

3 Q. When you went -- during count, you were in  
4 your room; is that correct?

5 A. Yes, ma'am.

6 Q. All right. And I believe you indicated  
7 previously that you were a little bit nervous?

8 A. Yes, ma'am. I was a lot of bit nervous.

9 Q. And at some point, did you have a  
10 conversation with anybody?

11 A. Yes, ma'am. I had spoke with Dan, Daniel  
12 Sanchez.

13 Q. Okay. Now, before you go into that, where  
14 was your cell in relationship to Daniel Sanchez'  
15 cell?

16 A. Me and Daniel both lived on the top tier  
17 in blue pod. I lived in cell 108 -- I believe the  
18 number was 108. His was 107. I had the very corner  
19 room, and he was my neighbor. He was the only  
20 neighbor I had in blue pod. The next room would  
21 have been yellow pod, so...

22 Q. So then -- and how is it that you were  
23 able to speak to him?

24 A. There's vents, the HVAC vents, air  
25 conditioning and stuff. And the vents -- there's

1 one on the roof that blows air out, and then the  
2 exhaust is on the bottom. And if you get down and  
3 look through the bottom vent, you can actually see  
4 right into the room that's next to you.

5 So I was -- me and Daniel were actually  
6 able to see each other, if we got down there, and we  
7 could see each other and have a conversation just  
8 like -- I'd say, all together, the space between us  
9 was maybe three or four feet. So it's real easy to  
10 hear each other. We could see -- like I said,  
11 there's a vent with big squares that you see right  
12 through the grating on it. So I was able to talk to  
13 him that way.

14 Q. And I'm going to put -- well, actually, I  
15 think we have it. 751. All right. And are you  
16 familiar with not the writing, but with the diagram?

17 A. Yes, ma'am.

18 Q. All right. And I'm looking at 108 on  
19 Exhibit 751. Would that be your room?

20 A. Yes, ma'am.

21 Q. And right next to you says "Daniel S."  
22 Would that be where Daniel Sanchez was?

23 A. Yes, ma'am.

24 Q. Okay. Now you indicated that you had a --  
25 did you have a conversation with Daniel Sanchez?

1 A. Yes, ma'am.

2 Q. And who started that conversation?

3 A. Daniel. I was in there. When I went in,  
4 I got high.

5 Q. And why did you get high?

6 A. Because I was nervous. I was trying to  
7 calm my nerves. I've never done anything like this  
8 before. So when I went in, I got high. I was  
9 pacing back and forth. And that's when I heard a  
10 knock on the wall.

11 Q. Okay. And what did you take that knock to  
12 be?

13 A. Daniel Sanchez trying to get my attention.  
14 So the vents are right there, located between that  
15 little wall and the toilet area, pretty much where  
16 my name is, where you see "Tim"; there is a vent  
17 right there in between that little wall right there.

18 Q. Okay. I'm putting my finger right  
19 between, I guess, two toilets. Is that about right?

20 A. Yes, it's the plumbing ducts and stuff in  
21 there. That's where the vents run through.

22 So I hear a knock on the wall.

23 Q. And what do you do?

24 A. I go down and I say, "What's up, carnal?"  
25 He said, "Blue rapped you?"

1 I said, "Yeah, si mon, he got at me."  
2 He was like, "You know what you got to do;  
3 right?"

4 I said, "Yeah, yeah." I said, "Yeah."  
5 And we started talking. And he was like --

6 Q. And what did he say?

7 A. Pretty much he was, like, "You know you  
8 got to do this. You got to earn your huesos. It's  
9 your time to earn your huesos right now."

10 Q. I'm going to stop you. What is "huesos"?

11 A. Huesos is the Spanish term for bones,  
12 which, in the prison culture, earning your bones is  
13 when you actually put in work, and by "work," once  
14 again, it's committing acts of violence in the SNM's  
15 case.

16 Q. So he said you got to earn your huesos.  
17 Did he continue to talk to you?

18 A. Yeah, we had a conversation. I said,  
19 "Yeah, yeah, all right."

20 And I talked to him. I said, "Well, why  
21 do we have to kill him?" You know what I mean?

22 MR. JEWKES: Your Honor, again we object  
23 to testifying in a narrative fashion.

24 THE COURT: Just ask a little more Q and

25 A. Try to break him up a little bit.



1 BY MS. ARMIJO:

2 Q. Did you continue to talk to him?

3 A. Yes, ma'am.

4 Q. What did he say?

5 A. He went on to say that pretty much that we  
6 need to put in this work. The S is about violence.  
7 He says the S has always earned its reputation  
8 through violence, and that we couldn't be like any  
9 of the other cars anymore. And by "cars" I mean the  
10 other prison gangs. He says, "All the other prison  
11 gangs, they're just jumping people and beating them  
12 up. We're not going to do that no more."

13 Q. And did he say anything else?

14 A. He said -- yeah, he said pretty much that  
15 "This is how it has to be. We get our respect.  
16 We're not going to be like them. We're taking it  
17 back to the old ways, back when the SNM was feared  
18 and respected through our violence," you know what I  
19 mean? "We're going to start doing it so people know  
20 there's consequences, so people" -- and for people,  
21 it's both -- I took it to mean not only SNM members,  
22 but other individuals in prison yards, that they'll  
23 know that, hey, the SNM ain't playing no more. They  
24 ain't just going to beat you up; they're going to  
25 stab you, they're going to try to kill you.

1 Q. Now, what was your reaction to this?

2 A. I was, like, "Man, why do we have to kill  
3 him?"

4 I'm still trying to lobby. Like I said,  
5 Javier was my friend. I'm still trying to lobby for  
6 him, saying, "Well, why do we have to kill him," you  
7 know what I mean? There's been other people that  
8 have come through with paperwork and we've just beat  
9 them up and made them leave.

10 And once again, that's when he reiterated,  
11 "The S is about violence. We're not like the other  
12 cars. We're going back to the old ways."

13 MS. DUNCAN: I object to the narrative.

14 THE COURT: You're going to have to ask  
15 more questions.

16 MS. ARMIJO: All right. Your Honor.  
17 Sorry about that.

18 BY MS. ARMIJO:

19 Q. Now, when he said -- when he was telling  
20 you -- you indicated that you were asking him why  
21 this had to be done; correct?

22 A. Yes, ma'am.

23 Q. And what was his answer?

24 A. Because the S is about violence. That's  
25 how we get our respect; that we're no longer going

1 to be like the rest of them, because he said the SNM  
2 was getting watered down, that we're just beating  
3 people up, and we need to go back to the old ways.

4 Q. Now, did you ask him anything in  
5 particular about why you had to do this?

6 A. Yeah, I asked him, I said, "Well, why has  
7 it got to be me?" And --

8 Q. And did he answer you?

9 A. Yes, ma'am.

10 Q. And what did he say?

11 A. He answered by saying, "It's your time.  
12 You've got to earn your huesos. You've got to do  
13 something more significant for the S. It's your  
14 time to start earning your huesos."

15 Q. Now, at some point -- what happened after  
16 count?

17 A. Right after count?

18 Q. Well, and then after this conversation --  
19 let me back up. This conversation, did it take  
20 place during count?

21 A. Yes, ma'am.

22 Q. And at some point was count over?

23 A. Yes, ma'am. It's a little after 5:00.

24 Q. And what happened when count was over?

25 A. When count cleared, Mario Rodriguez

1 appeared at my door. I was so preoccupied and high  
2 by this point. He's at the door, and he says, "Hey  
3 carnal. You're going to be all right."

4 He's trying to give me a pep talk, because  
5 I guess he could see, like, I'd never done anything  
6 like this.

7 Q. So what happened?

8 A. So he gave me the pep talk, saying, "You  
9 can do this." He said, "I lobbied for you. I don't  
10 want you to go."

11 Q. Okay. And then did he say anything else?

12 A. He went on to say, "But Dan is making you  
13 go. Dan is the one that wants you to go. I don't  
14 want you to go. I even offered to go in your place.  
15 But Dan said you have to go."

16 Q. So then what happened then?

17 A. So I talked to him -- that little  
18 conversation, I say, "Well, check this out, carnal.  
19 You're never going to believe this."

20 Q. What were you referring to?

21 A. The shank, Javier Molina's shank.

22 Q. What did you do?

23 A. I showed him. I said, "Look what Javier  
24 gave me."

25 And he says, "What? How did you get

1 that?"

2 So I explained the situation, how he gave  
3 it to me to hold for him in the count, or while he  
4 was at shower. And so I handed it to him and he  
5 was, like, "That's good that you have it. Now he  
6 can't stab you."

7 I said, "Well, yeah, that's a good thing,"  
8 you know what I mean? So --

9 Q. What happened with the shank?

10 A. So I put it in a bag of canteen. As I  
11 said earlier, I ran a store in the prison, so I had  
12 many bags of canteen. So I just dropped it in one.  
13 And I said, "Here, take this whole bag down there."

14 So he took --

15 Q. Who did you give it to?

16 A. Mario Rodriguez.

17 Q. Okay. And then what happened then?

18 A. So he takes it back to his cell -- or  
19 downstairs somewhere. And I'm still in my room.  
20 And that's when he comes back up --

21 Q. And who is "he"?

22 A. Mario Rodriguez. So he comes up, and I  
23 tell him, I said, "Hey, check it out, carnal," I  
24 said, "I'm changing the plans."

25 Q. And what did you mean by that?

1           A.    He's like, "What do you mean you're  
2   changing the plans? You can't change the plans.  
3   It's too late to change the plans."

4                   I said, "No, I'm changing the plans."

5                   He said, "What do you mean?"

6                   I said --

7           Q.    And what did you have in mind?

8           A.    Like, the original plan was for me to go  
9   in there and beat him up, knock him out, so he  
10   couldn't move, he couldn't get out of the cell.

11          Q.    Did you come up with a different plan?

12          A.    Yes, ma'am, I did. My plan was to,  
13   instead of fighting him, which would have been loud,  
14   and that, I'm thinking leaving DNA everywhere;  
15   anything can happen in a fight.

16          Q.    So what did you decide?

17          A.    So my plan was, I'm just going to go in  
18   there and choke him out.

19          Q.    Did you know how to choke out somebody?

20          A.    Yes. Being trained in mixed martial arts  
21   and through the military, I know how to choke people  
22   out.

23          Q.    What was Mario Rodriguez's reaction to  
24   that?

25          A.    He said, "All right. That sounds good."

1 That works. That's even better. That way, we won't  
2 get blood everywhere. During fights anything can  
3 happen. I'll be right back. I'm going to go tell  
4 Dan."

5 Q. And did he leave?

6 A. Yes, he left at that time.

7 Q. And where are you at this time?

8 A. I'm still in my room.

9 Q. Do you eventually come out of your room?

10 A. Yes, ma'am.

11 Q. And what do you do?

12 A. I walked in front of Javi's room. There  
13 is -- as you can see right here, there's -- like the  
14 top tier has like a little spot where you can walk  
15 around. It's right there in between the shower and  
16 105. There's a little area where can you stand.  
17 And I'm standing there, and Javier comes out.

18 Q. Are you referring to where it says "upper  
19 walkway," and kind of this corner area by the  
20 shower?

21 A. Yes.

22 Q. Have you seen the video in this case?

23 A. Yes, ma'am.

24 Q. And can you actually in the video see  
25 yourself walking on the top tier at different points

1 in time?

2 A. At different points. You can't see me  
3 walk out of my room, due to the fact that the camera  
4 that's facing directly at my room wasn't working at  
5 the time.

6 Q. All right. And just so that we're clear,  
7 we still have Exhibit 751. Javier Molina is 105; is  
8 that correct?

9 A. Yes, ma'am.

10 Q. And I just circled it. So you were three  
11 doors down; is that correct?

12 A. Yes, ma'am.

13 Q. And from the camera scenes, from the video  
14 that we have, I believe you indicated that you could  
15 not see your room?

16 A. Yes, ma'am.

17 Q. Now, was there a plan as far as how you  
18 were going to get into Javier Molina's cell?

19 A. There was. Like I say, I'm known for  
20 having drugs, so the plan was: Part of the  
21 conversation me and Javier had had earlier prior to  
22 him getting in the shower was, yes, I said, "Hey,  
23 it's Friday night. Do you think we can party?"

24 He's, like, "Yeah, we'll party."

25 So the plan was to get him in his room by



1 offering him drugs and doing drugs in his house.

2 Q. And who would supply the drugs?

3 A. I'd supply them.

4 Q. And would that be unusual, or would that  
5 be normal as far as the plan to go into his room and  
6 do drugs?

7 A. No, it would actually be very normal  
8 seeing that me, Mario, and Javier -- we were all  
9 good friends, so there was no suspicion would be  
10 raised if us three went into the room.

11 Q. Now, you indicate that Mario told you he  
12 was going to go and tell Daniel Sanchez about the  
13 change in plans. Did that happen?

14 A. I'm assuming so.

15 Q. You were not part of that conversation?

16 A. I was not part of the conversation.

17 Q. Now, at some point after Mario Rodriguez  
18 left, did he return to you?

19 A. He didn't really return to me. We were  
20 all up there talking on the top tier, me and Javier.  
21 At the time he says, "Well, hey, let's get high."

22 I said, "Yeah, all right."

23 So at that point in the video you'll see  
24 me walk back towards my room. I'm going to go get  
25 some Suboxone, and I'm walking back. And at some

1 point you'll see Blue and Javier interacting and  
2 stuff.

3 MR. JEWKES: Your Honor?

4 Q. What happens after that?

5 THE COURT: Hold on.

6 MR. JEWKES: We object. The witness is  
7 testifying in a narrative fashion.

8 MS. ARMIJO: Sorry.

9 THE COURT: Well, try to break it up as  
10 much as you can.

11 BY MS. ARMIJO:

12 Q. What happened after that?

13 A. Finally, at one point where all of us were  
14 walking back from my house --

15 Q. When you say your "house," you mean your  
16 cell?

17 A. Well, yeah, unfortunately. Yes, it's my  
18 cell, not my house.

19 Q. Is that what you refer to when you say  
20 your "house"?

21 A. Yeah. It's common for us to refer to them  
22 as our "house."

23 Q. So you said you were walking back from  
24 your house?

25 A. And me, Mario, and Javier, we all enter

1 Javier's room.

2 Q. Did anybody else enter the room?

3 A. No. I entered, and then Javier, and then  
4 Mario. That was the order. I was far back against  
5 the back wall. And then Javier would have been in  
6 between me and Mario.

7 Q. So then what happened?

8 A. So we're in there. I actually pull out  
9 Suboxone. And I gave a piece to Javier, I gave a  
10 piece to Mario. And they're finding spoons and --

11 Q. When you say "finding spoons," what would  
12 be the point of finding a spoon?

13 A. They use the drugs intravenously, they  
14 shoot up, so they had to dissolve it in water, so  
15 they'd place it in a spoon, and the hot water  
16 dissolves it.

17 Q. And you gave it to them. Was it your idea  
18 that you were going to take drugs, too, or you were  
19 just supplying it to those two?

20 A. Well, like I said, I had already --  
21 Javier -- when I came out of my room, I was already  
22 high. And that's when Javier said, "Wow, I want to  
23 be high like you."

24 MS. DUNCAN: Your Honor, it's  
25 nonresponsive and a narrative.

1 THE COURT: Overruled.

2 BY MS. ARMIJO:

3 Q. Javier said he wanted to be high like you?

4 A. Yeah, he said, "Man, can I get high like  
5 you?"

6 I said, "Yeah."

7 That's when I went back and got my drugs.  
8 So they knew I wouldn't be doing any drugs, because  
9 I was already high.

10 Q. And was it unusual for you to be high?

11 A. Very, especially that high. Like I say, I  
12 hardly ever get high.

13 Q. Going back to the room, I believe you  
14 indicated that you were in the back part of the  
15 room; is that correct?

16 A. Yes, ma'am.

17 Q. And they were putting the Suboxone on the  
18 spoon. What happened then?

19 A. At that point, I look over to Mario, and  
20 he's, like, nodding at me like --

21 Q. And what did you take that to mean?

22 A. All right. Let's go. Let's get this  
23 started, you know what I mean? And I didn't do  
24 nothing.

25 Q. Okay.

1 A. I just stood there.

2 Q. And why didn't do you anything?

3 A. Because that was my friend. Like I say, I  
4 really didn't want to see anything really happen to  
5 him. That was my buddy. In a way, I wish I could  
6 have warned him, but I knew I couldn't.

7 Q. So then what happened after that?

8 A. So Mario nods at me again. He's like,  
9 What are you waiting on?

10 Q. That was your interpretation?

11 A. Yeah, like, let's get this started  
12 already. Let's get this over with.

13 Q. And what is -- at that time, what is  
14 Javier doing?

15 A. Javier is messing around waiting for his  
16 Suboxone to dissolve in the spoon. We're all just,  
17 I guess say, bullshitting, small talk in the room,  
18 him and -- we're all just talking back and forth,  
19 idle chatter, waiting for the Suboxone to dissolve.

20 Q. You said that Mario had given you kind of  
21 a second nodding?

22 A. Yes.

23 Q. And what did you do?

24 A. I hesitated again. And then there was  
25 either -- like I want to say one more nod, and

1 that's finally when I moved in behind him.

2 Q. And what did you do?

3 A. I caught him in a rear naked choke, which  
4 is me standing behind him. My bicep would be  
5 against one artery here, my forearm would be on the  
6 other side. I choked him out.

7 Q. So you started to choke him?

8 A. Yes, ma'am.

9 Q. And what was Javier doing at that time  
10 that you started to choke him?

11 A. He -- when I pulled my arm around him, he  
12 started to reach up, I guess, to, like, grab my arm.

13 Q. Okay. And you reached up, and your arms  
14 went up in a motion. Did his arms go up to, like,  
15 reach towards his neck?

16 A. That's what I'm talking about. I have  
17 them up here. I'm choking him. And Javier reaches  
18 up to, I guess, grab my arms. I'm assuming to grab  
19 my arms.

20 Q. And then --

21 A. Then Mario at that point grabs his wrists.  
22 We're all standing still. He grabs his wrists, and  
23 pulls his hands back down.

24 Q. Then do you continue to hold his neck?

25 A. I continue to hold his neck, ma'am.

1 Q. Then what happened?

2 A. At one point, I know that he's going out.

3 So --

4 Q. How do you know that?

5 A. Well, being a trained fighter, I've been  
6 choked out myself in training sessions, and stuff.  
7 So I know it don't take long to actually choke  
8 someone out in that fashion. If I would have hit  
9 him on an air choke, it would have been a lot  
10 longer. But seeing that I hit the arteries, it's a  
11 very fast and efficient way to knock someone out.

12 Q. So did he start to go down?

13 A. So at one point, you feel his body start  
14 giving a little. At that point, I kicked his legs  
15 out from him. And I'm still choking him, kick his  
16 legs out, and I set him down.

17 Q. And then did Mario still have his hands,  
18 or did he let go of his hands?

19 A. At this point, I really don't know. By  
20 now, he's probably, like, going -- because as I'm  
21 going down, I remember once by the time I stood up,  
22 Mario had already turned around, and Jerry Montoya  
23 and Jerry Armenta were seated in the corner by 101.  
24 So Mario is --

25 Q. You mean 101 -- I'm referring to

1 Government's Exhibit 751 -- is the room down the  
2 hall, like down here with an X on it?

3 A. Yes, ma'am.

4 Q. Which would be like at the top of the  
5 stairs; is that correct?

6 A. Yes, ma'am.

7 Q. Okay. And so you indicated that you  
8 turned around and you saw them coming in?

9 A. So when Mario turns around, he's motioning  
10 him like, Hey. And at that point he says, "What the  
11 fuck? Hurry up."

12 Q. Who was he saying that to?

13 A. He's saying it to both Jerrys. And at  
14 this time, like I say, I loosened the grip on my  
15 choke hold prior to putting him down. And I guess I  
16 got kind of like a complex, thinking I didn't do my  
17 job good enough. I'm in a zone. I don't know  
18 what's really going on. So when I hear Mario say,  
19 "What the fuck?" --

20 Q. What are you thinking?

21 A. I'm thinking he's onto me, like he knows I  
22 didn't choke him out to my full potential.

23 Q. And did you choke him out to your full --

24 A. No, I didn't.

25 Q. -- potential? And why not?



1           A.     He's my friend. And I knew -- the minute  
2 I felt his legs start giving out, I loosened the  
3 hold, knowing that he was going to come back, you  
4 know what I mean? If I would have stayed choking  
5 him, it would have taken him that much longer for  
6 him to come back. So by loosening, I was trying to  
7 give him a chance. You know what I mean? So -- I  
8 didn't want him dead.

9           Q.     So, you were -- you loosened the hold, and  
10 he went down on the ground. And then you said that  
11 Mario said, "What the fuck," and you thought it was  
12 aimed at you?

13          A.     Yeah, I did. When he was saying, "Hurry  
14 up. What the fuck," he was talking to the Jerrys.  
15 But I didn't really know what was going on. So when  
16 I stood up, I hear him saying, "What the fuck?" And  
17 like I said, I got a complex thinking, Well, shit,  
18 now they know that I could have choked him out  
19 better, or whatever. So --

20          Q.     What did you do?

21          A.     I stepped on his head. You know what I  
22 mean? And I stomped about three times. The first  
23 one, I made contact with his forehead. On the  
24 second two I stomped like I was kind of grazing the  
25 side of his head, not really hitting his head. But

1 I was hitting pretty much the floor, my brute force  
2 was hitting the floor, you know what I mean? And by  
3 now, both Jerrys are in there.

4 Q. So then what happens?

5 A. The Jerrys come in, all this, he's -- Blue  
6 is telling them, "Hurry up, get him, get him," you  
7 know what I mean?

8 Q. And what do you do?

9 A. So, as I said before, I was in the very  
10 back. So I remember putting my left foot on  
11 Javier's toilet. And then there's a little wall  
12 that separates the toilet area from the bed. I put  
13 my left foot on the toilet, my right foot on top of  
14 that wall, and I jumped down to Javier's bed with my  
15 left foot, and then I -- so I could get around  
16 Javier, because now there's me, Javier, Mario, and  
17 both Jerrys.

18 Q. And what's going on as you're doing this  
19 maneuver?

20 A. At this time, I'm running out and both  
21 Jerrys are getting in position. One is getting  
22 ready to -- like, getting ready to straddle him.  
23 The other one is on the side.

24 As I walk out of the room, you see me look  
25 back. And at that point, I could see both of them

1 physically stabbing him.

2 Q. Okay. When you say "you see me," are you  
3 referring to the video?

4 A. Yes, ma'am.

5 Q. And you looked back?

6 A. Yes, I got about, I want to say, four or  
7 five steps out of the room, and I look back and  
8 that's when I see both Jerrys repeatedly stabbing  
9 him.

10 Q. Where is Javier at the time?

11 A. He's laying on the ground.

12 Q. And is he -- at any point in time while  
13 you're looking back, do you see him get up?

14 A. No, I don't. I only look back for a split  
15 second. I don't sit there and stay watching. I  
16 look back real quick. I see them stabbing him. And  
17 I proceed to the end of the tier and go down the  
18 stairs.

19 Q. When you say "the end of the tier," are  
20 you referring to -- you're on the upper walkway  
21 going towards like the shower area?

22 A. Going towards 101.

23 Q. All the way --

24 A. I'm walking all the way, and I go down the  
25 stairs right there by 101.

1 Q. Can you hear anything going on at this  
2 point in time?

3 A. I hear commotions, noise. But I -- like I  
4 say, I never looked back to confirm them. I know  
5 when I was going down the stairs, Jeffrey Madrid is  
6 coming up the stairs.

7 Q. And is he another person that's in the  
8 pod?

9 A. Yes, ma'am. He's another SNM member  
10 living with us. He's going up the stairs.

11 Q. And do you tell him anything?

12 A. And I do. I tell him, "It's none of your  
13 business. Just mind your own. It's none of your  
14 business. Go back down."

15 So he stops. I tell him that real quick,  
16 and I continue to head down the stairs.

17 Q. Okay. And do you know whether or not he  
18 continued to go upstairs, or did he turn around and  
19 go your same direction?

20 A. He did neither. He just stopped and kind  
21 of looked up, and he could see -- from standing on  
22 the stairs, he could have a direct view into  
23 Javier's room.

24 Q. So at some point do you see something  
25 happen in Javier's room from downstairs?

1           A.     I'm now downstairs. Downstairs is where  
2 all -- there's tables in the common area and stuff.  
3 So I'm standing there by the microwave and stuff,  
4 and I see Javier actually come out of the room.

5           Q.     And when you see him come out of the room,  
6 do you notice anything about him?

7           A.     He has a blood spot on his chest. You  
8 could see a decent-sized bloodstain.

9                     And shortly -- a few -- maybe a second or  
10 so after he comes out, he's walking towards the  
11 stairs, and he's saying, "All right, all right,  
12 carnal, you got me. I'll leave."

13          Q.     And you could hear him say that?

14          A.     Yeah, I clearly remember that. It's the  
15 last words I've ever heard from him.

16          Q.     And where is he going?

17          A.     He's walking towards the stairs. And he's  
18 saying that over and over. "You got me, you got me  
19 carnal. I'll leave. I'll leave."

20                    And at that time I hear him saying that,  
21 Mario says, "Get him. What the fuck. Hurry up, get  
22 him."

23          Q.     And who is he directing that to?

24          A.     He's talking to the Jerrys, Montoya and  
25 Armenta.

1 Q. So do you notice where they're at?

2 A. They're now trailing him. They're a few  
3 steps behind him. They're walking down the stairs,  
4 or Molina is walking down the stairs. And Jerry and  
5 Jerry -- it's Javier Molina, Jerry Montoya, and then  
6 Armenta. And then as soon as Javier hits the bottom  
7 stairs, he turns around and gets in a fighting  
8 stance.

9 Q. Who gets in a fighting stance?

10 A. Javier Molina at the bottom of the stairs.  
11 He gets in a fighting stance. And that's when  
12 little Jerry Montoya punches him.

13 Q. Now, on the video, can you actually see  
14 that, or is it in an area that's blocked by the  
15 camera?

16 A. You should be able to see it.

17 Q. Now -- and I'm going to show actually  
18 Exhibit Number 17, if we can get it turned over.  
19 Sorry.

20 Okay. We're looking at a picture that's  
21 Exhibit Number 17 and there's -- on the top there's  
22 some stairs and at the top it's 101. Is that the  
23 same 101 room that we had on the diagram before?

24 A. Yes, ma'am.

25 Q. And so there appears to be a doorway.

1 Where were you at the point in time where we are in  
2 relationship to this picture?

3 A. I'm in the common area that's to the -- if  
4 you go in that doorway, you turn right. And there's  
5 a common area that has tables. There is one, two,  
6 three, four tables.

7 Q. And I'm going to show Exhibit Number 21.  
8 Does that look like some of the tables?

9 A. Yes.

10 Q. And I'm going to show you Exhibit Number  
11 23.

12 A. That's still the same pod, and that's more  
13 where I was, by the microwave.

14 Q. Okay. There is a microwave against a  
15 wall. Is that -- and I just circled it -- is that  
16 where you were standing?

17 A. In that general area. I was kind of in  
18 front of that last table right there in that general  
19 area.

20 Q. Right here?

21 A. Yes, around that area.

22 Q. And I circled the last table, the bottom  
23 of the floor there. Now, on this picture we also  
24 see cell 108 and 107 at the top. Do we see your  
25 cell?

1 A. Yes.

2 Q. What number is it, again?

3 A. 108.

4 Q. And that's the last one, I believe you  
5 said. I guess you'd be wall -- you share a wall  
6 with yellow pod; correct?

7 A. Yes, ma'am.

8 Q. So you're in this area. Who else is down  
9 on this area with you, if you recall?

10 A. I remember Ronald Sanchez being down  
11 there. That's really all I can remember being in  
12 that. Daniel was down there. Daniel --

13 Q. Where was he?

14 A. Daniel was with his brother at the table.  
15 Actually, you could see the table, the table that  
16 has a blanket with cards on it.

17 Q. Is that the table that they were on?

18 A. Yes.

19 Q. If we could go back to Exhibit 21. Thank  
20 you. All right.

21 Do you see the table now?

22 A. Yes, ma'am. I guess it would be the  
23 middle table, in between those two right there in  
24 the corner.

25 Q. So I'm circling it now. Does it have a



1 blanket or a cover on the table?

2 A. Yes, there's a blanket with cards, to play  
3 cards with, so the cards won't slide off the table.  
4 They always put down a blanket whenever they play  
5 any kind of games and stuff so the cards don't slide  
6 off.

7 Q. And then in this picture from that angle,  
8 can you see cell 105?

9 A. Yes, ma'am.

10 Q. So you indicated that Javier got down --  
11 and from what you could see, in a fighting stance?

12 A. Yes, ma'am.

13 Q. And what happened then?

14 A. And Jerry Montoya punches him, and they  
15 begin to fight. They get in a little fight at the  
16 bottom of the tier. And that's when Jerry Armenta  
17 gets in. And at this point, Jerry Montoya don't  
18 have his weapon no more. He doesn't have a shank.

19 Q. How do you know that?

20 A. Because -- well, I didn't see a shank in  
21 his hand. I didn't see one anywhere. He never used  
22 it. So if he had it, he had it in his waistband, or  
23 whatever.

24 Q. You mean you never saw him use his shank  
25 down there?

1           A.    I never saw Montoya use or possess a  
2    weapon downstairs.

3                    So Montoya and Molina are fighting, and  
4    Jerry Armenta comes in and he still has his weapon.  
5    He has his shank. And he comes in and proceeds --  
6    he stabs him a few more times, and now, at some  
7    point he falls.

8           Q.    Who is "he"?

9           A.    Molina. And at this point, you'll see  
10   Li'l Jerry kind of -- he walks away. You never  
11   really see him again. After Javier Molina falls,  
12   Jerry Montoya disappears somewhere.

13          Q.    And is that what you saw?

14          A.    Yes.

15          Q.    And do you know where he went?

16          A.    He went downstairs towards his room.

17          Q.    And that's what you saw?

18          A.    Yes.

19          Q.    And then what did you see as far as Jerry  
20   Armenta?

21          A.    Jerry Armenta continued to kick him. He  
22   stabbed him once, twice. A couple of times while  
23   was on the ground, he kicked him. And then at some  
24   point, I guess, there was a chain Javier was wearing  
25   got broke off. So I seen him walk -- the chain was

1 laying in the middle of the pod.

2 Q. Was that towards where you were standing,  
3 like in between where they were and where you were  
4 standing on that floor there?

5 A. Yes, it was in the common area.

6 Q. And then who did you see?

7 A. I seen Armenta walk and go pick it up, and  
8 then he walks back. By this time, they're in a real  
9 corner, like right against that door that was  
10 opened, that you see in the picture.

11 Q. And what do you do?

12 A. I don't have that clear, clear view no  
13 more. Because where I'm at, I can't -- there is a  
14 wall right there, so I can hear scuffling. And at  
15 this point that's when the COs finally open the  
16 door, and they start to come in.

17 Q. Now, I believe you talked about what you  
18 heard Javier Molina say when he was going down the  
19 stairs. Did you hear him ever say anything else?

20 A. I -- no, those were literally the last  
21 words I heard him say.

22 Q. So the guards come in, and where do you  
23 go?

24 A. I scaled the tier. As the picture  
25 indicated, there's bars. So I climbed up the bars

1 and went -- jumped the top bars, and went straight  
2 into my room.

3 Q. And is that visible in the camera, or was  
4 that out of the camera view?

5 A. If that camera would have been working, it  
6 would have been visible. But due to the fact that  
7 the one camera that faces directly towards my house  
8 was broken at that point in time, you don't see  
9 that.

10 Q. So does everybody then go on lockdown?

11 A. Yes, everyone starts locking down. The  
12 guards come in, they're controlling the situation,  
13 locking everybody down.

14 Q. Okay. And by "locking everybody down,"  
15 does that mean putting people back in their pods?

16 A. It's pretty --

17 Q. Not the pods, I'm sorry. Their cells?

18 A. Yes, in our case, putting everybody in  
19 their assigned cell.

20 Q. Are you aware of whether or not Daniel  
21 Sanchez was put in the cell next to you?

22 A. Yes.

23 Q. And how are you aware of that?

24 A. Because we had another conversation after  
25 the fact.

1 Q. Okay. Tell us about that.

2 A. All right.

3 Q. Who started the conversation?

4 A. Dan, once again, knocks on the wall.

5 Q. And what do you do?

6 A. Say, "What's up, carnal?" And --

7 Q. Who said, "What's up, carnal?" You or  
8 him?

9 A. I say, "What's up, carnal?"

10 And once again, we're in that vent in  
11 between the toilet and the bed. And that's where he  
12 says -- he congratulates me, telling me, "Good job.  
13 You did a good job." He says, "You did good. You  
14 did your part. From now on," he says, "you have my  
15 respect. You won't see me talking shit or talking  
16 down to you no more."

17 Q. Okay.

18 MR. VILLA: Your Honor, can we have a  
19 limiting instruction, please?

20 THE COURT: These conversations can only  
21 be considered in the charges against Mr. Sanchez,  
22 not against the other three defendants.

23 BY MS. ARMIJO:

24 Q. And after he told you that you had done a  
25 good job, did he instruct you or tell you anything

1 else?

2 A. He just pretty much -- like I said, "Good  
3 job, good job." And he again told me, he says,  
4 "This is how it's going to be from now on. We're  
5 going back to the old ways."

6 Q. Did he have a conversation with you about  
7 whether or not there was any evidence?

8 A. Oh, yeah. He says, "Just don't even trip,  
9 carnal." He says, "Keep your mouth shut. Don't say  
10 anything." He says, "Don't even trip. The cameras  
11 can't see into Javier's room. They don't have  
12 nothing on you."

13 Q. And how were you feeling at that point?

14 A. I -- honestly, I was in shock. Like I  
15 said, I just participated in one of my best friend's  
16 murder or -- at the time, I didn't know he was dead.  
17 So I just knew I participated in one of my best  
18 friend's assaults. And so I was in the zone. I was  
19 like, "All right. All right. Fuck, yeah, carnal,"  
20 you know what I mean? "You ain't got nothing to  
21 worry about. I ain't going to say nothing."

22 And like I said, I'm in a stupor of being  
23 high, the adrenaline rush of everything that just  
24 happened. I can't even really explain how -- my  
25 emotional state. It was just like a roller coaster.

1 Q. Now, do you stay in that room the whole  
2 time?

3 A. We stay in there. We're locked down.  
4 We're actually locked down for a little -- it seemed  
5 like a long time. I can't even really put a time  
6 line. I'd say maybe 30 minutes or more and the  
7 State Police show up. And the State Police start  
8 conducting -- they're locking the scene down,  
9 getting everything. And so they start moving us one  
10 by one. They take each individual out, to take  
11 us -- they took us from our cell to the unit  
12 manager's office. They took pictures of us. They  
13 took all our clothes, took pictures for their  
14 evidence. And from there, once we were done with  
15 that process, they took us to a whole other unit  
16 over there in 2-A. I want to say that was unit 2-A.

17 Q. Now, at some point the next day, do you  
18 know whether anybody was transferred up to the  
19 North?

20 A. The next day, early in the morning, I know  
21 Daniel Sanchez, Archie Varela, and Mario Rodriguez  
22 were transferred on emergency transport back to the  
23 North.

24 Q. Did you stay down at Southern?

25 A. I did. I stayed at Southern for about

1 another six months. I was -- during the initial  
2 investigation of everything, prison is on lockdown  
3 due to it. The prison guards are conducting  
4 investigation. And that's actually how I found out  
5 Javier was dead. I still didn't know until the STIU  
6 came, and they started doing interviews of  
7 everybody, and they're actually the ones that told  
8 me that he was dead. And so --

9 Q. When they came and pulled you out and  
10 talked to you, did you give a statement?

11 A. I didn't. I just -- they asked me: "What  
12 were you doing in there?"

13 I said, "I was just in there, we were  
14 talking about food, we were -- just small talk and  
15 stuff." I never gave a statement of what happened.

16 Q. Now, at some point did you have a  
17 conversation with Daniel Sanchez about the shanks in  
18 this case?

19 A. Yes, ma'am.

20 Q. And where was that conversation?

21 A. It was, once again, in the vent. It was  
22 prior to the actual murder, actual assault taking  
23 place, that he had told me that he had acquired the  
24 metal from Rudy's walker; that they went in and got  
25 it from him.



1 Q. Did he say anything about that to you?

2 A. Who? Daniel or --

3 Q. Daniel Sanchez, yes.

4 A. He just said that, "Yeah, don't even  
5 trip." This is the conversation of why we have to  
6 put in work, on and on, and he's like, "Don't even  
7 trip. We've already got the fierros made. We went  
8 and got the metal from Rudy's walker."

9 Q. Now, did you get charged initially?

10 A. Initially, statewide, as state charges,  
11 no. But I did get an institutional writeup for --  
12 my initial charges were murder, attempted complicity  
13 to a murder, gang activity -- and what was the other  
14 one -- and tampering with evidence. Those were the  
15 four initial charges on my writeup. So that's  
16 another reason I stayed at Southern penitentiary  
17 longer. I was facing my writeup there.

18 Q. Did you fight your writeup or not?

19 A. Yes, I did. I fought it. And I ended up  
20 beating the murder. I beat tampering with evidence,  
21 and got found guilty of attempted complicity to a  
22 murder and gang activity.

23 Q. Then where were you moved?

24 A. From there, they submitted a pack to refer  
25 me to the North. Like I say, that's the maximum

1 security prison now in Santa Fe. And so I guess all  
2 their legal paperwork they've got to do through  
3 Central Office, and everything. And I get approved  
4 to get sent to the maximum security. So they shot  
5 me up to the North in Santa Fe.

6 Q. And when is this that you're shot -- if  
7 you can recall, that you're sent up to Santa Fe?

8 A. I want to say September-ish.

9 Q. Of what year?

10 A. Of '14, 2014.

11 Q. And are you there until you're arrested in  
12 December of 2015?

13 A. No, ma'am. I'm there in -- throughout  
14 this. The State ended up picking up the case and  
15 charged Jerry Montoya, Jerry Armenta, Mario  
16 Rodriguez with the murder, and stuff. So I ended up  
17 being put on the State's witness list. And the  
18 State was trying to use me, and Jerry Montoya was  
19 trying to use me. I was on a dual list. And the  
20 court proceedings were getting ready to take place.  
21 So I left the North in June --

22 MR. JEWKES: Your Honor, once again, I  
23 object to him testifying in a narrative fashion.

24 THE COURT: Why don't you try to break it  
25 up with some questions, Ms. Armijo?

1 BY MS. ARMIJO:

2 Q. Okay. You said that the State was  
3 proceeding. So what happened?

4 A. So when Jerry Montoya planned on me being  
5 his witness, they actually transported me from the  
6 North to Cruces, to the prison in Cruces. I have an  
7 interview.

8 Q. And why were you transferred to the prison  
9 in Cruces?

10 A. It was Jerry's lawyers. They had me  
11 transported down there, in order to -- they were --  
12 like I said, Montoya was going to try to use me as a  
13 witness on his behalf for the state murder.

14 Q. And when was this, if you can recall?

15 A. '15, March, April; shot in the dark,  
16 April, May.

17 Q. I don't want you to shoot in the dark.

18 A. Okay, then --

19 Q. Is it before your arrest in the federal  
20 case?

21 A. Yes, ma'am.

22 Q. And I'm going to show you a defense  
23 exhibit, Defendants' FK. I'm going to go first to  
24 the second page of that. Do you recognize this?

25 A. Yes, ma'am.

1 Q. And I'm going to look to the bottom. It's  
2 signed by Timothy Martinez; is that correct?

3 A. Yes, ma'am.

4 Q. Is that you?

5 A. That is correct.

6 Q. Okay. And it says, "Declaration under  
7 penalty of perjury," and then it has your signature  
8 again?

9 A. Yes, ma'am.

10 Q. And it says, "Executed at New Mexico State  
11 Penitentiary of Santa Fe, New Mexico, on 11/3 of  
12 '14"; is that correct?

13 A. Yes, ma'am.

14 Q. Did you write this?

15 A. Yes, ma'am.

16 Q. And what were the circumstances for you to  
17 write this? And if you need to read it, you can.

18 Did you just reread this?

19 A. Yes.

20 Q. Just to be fair, I'll show you the first  
21 page of this. It says, "Amended Exhibit and  
22 Supplemental Witness List," and it appears to be  
23 that of Jerry Montoya; is that correct?

24 A. Yes.

25 Q. Tell us about this. Did you write this?

1           A.    Yes, I did.  At the time we were still all  
2 active members.

3           Q.    You were still active members?

4           A.    Yes, I was an active member of the SNM,  
5 and there was the plan that Jerry Armenta was going  
6 to take the charge.  He was supposed to take the  
7 whole charge.

8           Q.    Okay.  When you say Jerry Armenta was  
9 supposed to take the whole charge, are you referring  
10 to the murder charge?

11          A.    Yes, ma'am.

12          Q.    So did you -- why did you write this?

13          A.    So I wrote this as a way to get Li'l  
14 Jerry, or Jerry Montoya's involvement, to X out his  
15 involvement, saying that he really had nothing to do  
16 with it.

17          Q.    Okay.  Is that true?

18          A.    No, ma'am, it's not.

19          Q.    Whose idea was it that you write this?

20          A.    Me and -- I pretty much said, "Hey, don't  
21 even trip.  I'm going to help you, Jerry.  I got  
22 you."  I call him Plaz.  His nickname is Plaz.

23          Q.    Did you write this to assist him?

24          A.    Yes, ma'am.

25          Q.    Is any of it -- as far as -- are there

1 things in here that are not true?

2 A. That are not true? Yes, ma'am.

3 Q. So did Jerry Montoya want to call you as a  
4 witness?

5 A. Yes.

6 Q. Now, you said you were doing that because  
7 you were still an active member?

8 A. Yes, ma'am.

9 Q. And how does that come into play?

10 A. The plan was for Jerry Armenta to take the  
11 charge, meaning admit to it, and say he solely acted  
12 on his own to kill Molina.

13 And so, being an active member, we lied to  
14 manipulate the system. If I can get -- at that  
15 time, like I say, I was an active member. If I can  
16 help get one of my fellow carnals off, I was going  
17 to help them.

18 Q. Is that what you did?

19 A. That's the reasoning behind that letter.

20 Q. Now, at some point in 2015 -- I believe,  
21 just for the record, that was -- let's see, I don't  
22 think you have a date on this. Oh, yeah, 11/3/14,  
23 sorry. Does that appear correct, when you wrote it?

24 A. Yes.

25 Q. And then this document is filed in January

1 of 2015; correct?

2 A. Yes.

3 Q. Now, at some point in that year while you  
4 were at PNM, do you know where Anthony Baca is at  
5 this time?

6 A. Yes, sir.

7 Q. Not where he is. At some point -- let me  
8 ask a better question. Sorry. At some point, is  
9 Anthony Baca at PNM with you?

10 A. Yes, ma'am. After --

11 Q. And had he been out of state for a while,  
12 if you are aware? Yes or no?

13 A. Yes, ma'am.

14 Q. And was he brought back?

15 A. Yes.

16 Q. And when he was brought back, were you at  
17 the same facility that he was?

18 A. Yes, ma'am. We were both at PNM North in  
19 Santa Fe.

20 Q. And approximately when was this?

21 A. October, late October. They brought him  
22 back in late October.

23 Q. Okay. Of what year?

24 A. Of 2015.

25 Q. Did you have a conversation with him?

1 A. I did.

2 Q. Did you have more than one conversation  
3 with him?

4 A. No. Actually, I had this one  
5 conversation. We were out at the yard and --

6 THE COURT: Why don't you really break  
7 this down, Q and A, so we can make sure the  
8 defendants know what's coming in?

9 MS. ARMIJO: All right.

10 BY MS. ARMIJO:

11 Q. You were in the yard with him; is that  
12 correct?

13 A. Yes, ma'am.

14 Q. And you had a conversation with him?

15 A. Yes, ma'am.

16 Q. Okay. And in the conversation, did you  
17 talk about the Molina murder?

18 A. Yes, ma'am.

19 Q. And did Anthony Baca tell you anything in  
20 reference to the Molina murder?

21 A. Yes, ma'am.

22 MR. JEWKES: Your Honor, we'd ask for a  
23 limiting instruction.

24 THE COURT: Well, come up here. Let's  
25 figure out how we're going to get through this.



1 (The following proceedings were held at  
2 the bench.)

3 THE COURT: So when I look at the James  
4 letter, and I look at what he's about to say, if he  
5 says it just like it's in the James letter, this is  
6 kind of a mixed bag. Seems to me none of it is  
7 co-conspirator statement, none of it is coming in  
8 for the truth as to everyone. But the sentence, "I  
9 sent them a letter. They didn't want to take me  
10 seriously when I said I would stop killing. Thought  
11 I was joking. Now they have a body on their hands."

12 That's a statement against Baca. It's a  
13 statement about his motives for ordering the Molina  
14 murder. I don't think it would be state of mind.  
15 So it's not going to come in to anybody else. So I  
16 think he'd be entitled to a limiting instruction on  
17 that.

18 The rest of that statement, where he  
19 begins to talk about Marcantel and those sort of  
20 things -- let me go back also to those two  
21 statements that -- those two sentences that are at  
22 the beginning of your James letter. That's going to  
23 be a predeclaration state of mind. It's not going  
24 to be his existing state of mind. The rest of it,  
25 though -- when I look at that James letter, the rest

1 of it looks like it's explaining his state of mind,  
2 because it talks about at least circumstantial  
3 evidence state of mind, is going to talk about what  
4 we're going to do, how we're going to -- we're doing  
5 it and things like that. And I guess they have  
6 their 803(3). So they come in without a limiting  
7 instruction.

8           Then I think that the statements as to  
9 Marcantel and Santistevan are relevant as to  
10 enterprise evidence. What I would propose, if this  
11 is all right with the defendants, so that you get  
12 the limiting instruction, when you get the limiting  
13 instruction is that on the first two sentences, Ms.  
14 Armijo lead the witness, and get those two  
15 statements out. Then I give the limiting  
16 instruction as to those, and then the rest, let him  
17 testify, and I do not give a limiting instruction.  
18 Would that work for everybody?

19           MS. JACKS: When the Court is talking  
20 about the last of the statements being  
21 co-conspirator statements --

22           THE COURT: None of these are  
23 co-conspirator.

24           MS. JACKS: I thought you said state of  
25 mind.

1 THE COURT: They are state of mind.

2 MS. JACKS: The state of mind goes to the  
3 state of mind regarding Marcantel and Santistevan.  
4 He's the only defendant charged in that. The rest  
5 of us are not.

6 THE COURT: It also, though, goes to  
7 enterprise evidence.

8 MS. JACKS: Well, but it's --

9 THE COURT: It's not 803(3), so it's not  
10 hearsay.

11 MS. JACKS: We've made our objections.

12 THE COURT: Okay. I understand. Would  
13 that be agreeable, though, that she just lead  
14 through the first two sentences, and then I'll give  
15 a limiting instruction, and then we'll -- if you'll  
16 go ahead and testify, and I won't give the limiting  
17 instruction as to Red, Ms. Bhalla?

18 MS. BHALLA: Just that I join in the  
19 objection, Your Honor, with regard to the Marcantel.  
20 And Your Honor, just so we're clear, I had  
21 co-counsel get me the letter, because I have it from  
22 my --

23 THE COURT: What I have, the first two  
24 sentences, I'm not quite sure what he's saying here,  
25 "I sent them a letter. They didn't want to take me

1 seriously when I said I would stop the killings,  
2 thought I was joking. Now they have a body on their  
3 hands."

4 That is entitled to a limiting  
5 instruction. It's not clear to me what's being  
6 said, but that doesn't go against anybody else.

7 MS. DUNCAN: Your Honor, just since we're  
8 already up here, I'll make an objection against all  
9 these statements coming in against Mr. Baca.

10 THE COURT: All right. I'll deny that  
11 objection.

12 Do you have it?

13 MS. ARMIJO: Yes, Your Honor. And I have  
14 one more thing that I'm going to ask about that's  
15 not covered.

16 THE COURT: Yes.

17 MS. ARMIJO: Mr. Baca told him when he was  
18 up there that -- "to stay strong, don't rat, don't  
19 worry about Kreaper. I have someone on that to  
20 visit his family."

21 THE COURT: Yeah, I think that I include  
22 as all state of mind.

23 MS. ARMIJO: Okay.

24 THE COURT: You can get that in, and I  
25 won't enter any sort of limiting instruction on

1 that. Just let him testify about that, rather than  
2 leading him on that.

3 MS. ARMIJO: Okay. Thank you.

4 THE COURT: Lead him on the first two so I  
5 can get the limiting instruction out.

6 MS. ARMIJO: Okay.

7 (The following proceedings were held in  
8 open court.)

9 THE COURT: All right, Ms. Armijo.

10 BY MS. ARMIJO:

11 Q. All right. I believe we were talking  
12 about a conversation that you had with Anthony Baca.

13 A. Yes, ma'am.

14 Q. Now, at the time that you had the  
15 conversation with Mr. Baca, what was your  
16 understanding as to his position in the gang? And  
17 we're now talking about October of 2015; is that  
18 correct?

19 A. Yes, ma'am.

20 Q. What was his position at that time?

21 A. He was still the leader over all of the  
22 SNM. He was the main guy in the SNM.

23 Q. And did Anthony Baca tell you that he  
24 "sent them a letter, they didn't want to take me  
25 seriously when I said I would stop the killings.

1 They thought I was joking. Now they have a body on  
2 their hands"?

3 A. Yes, ma'am.

4 THE COURT: All right. You can only use  
5 this statement as to Mr. Baca in your consideration  
6 of the charges against him. You can't use it  
7 against any of the other three defendants.

8 All right. Ms. Armijo.

9 Q. Now, did he also indicate to you anything  
10 about making the SNM's presence felt?

11 A. Yes, ma'am.

12 Q. And what did he tell you in reference to  
13 that?

14 A. We were talking -- he was, like, "We need  
15 to make our presence felt again. We need to  
16 reestablish our power, show them that we run the  
17 system."

18 Pretty much that they wanted to hit all  
19 the top officials. He didn't want to hit no more  
20 regular COs, no more lower-level people. He wanted  
21 top officials. And that's when he told me that he  
22 had -- that there was something in the works for  
23 Mr. Gregg Marcantel and Dwayne Santistevan.

24 Q. Did you know who Dwayne Santistevan and  
25 Gregg Marcantel were?

1           A.     Yes.   Mr. Santistevan, to my  
2 understanding, was the STIU -- big STIU guy.   And  
3 Marcantel was the Secretary of Corrections.

4           Q.     All right.   So he tells you specifically  
5 about that.   What else did he say?

6           A.     And that he'd also like to hit some of the  
7 wardens, too, would be nice, to be able to hit any  
8 top level in the Corrections, wardens on up; that he  
9 really didn't want to mess with no more regular COs,  
10 because we've done that in the past.   He wanted to  
11 make a name for us again.   He wanted our presence to  
12 be felt.   And that's when he was, like, "What's the  
13 worst that's going to happen?   We hit one of these,  
14 it's going to get us our recognition.   What's the  
15 worst that can happen?   Ship us out of state for a  
16 little while.   Eventually, let us all back in the  
17 state."

18          Q.     And is that what he told you?

19          A.     Yes, ma'am.

20          Q.     Now, did he also tell you anything  
21 about -- when he was talking to you -- this -- about  
22 whether or not it started with Javier?

23          A.     Yes, ma'am.

24          Q.     What did he say?

25          A.     He said Molina was just pretty much a

1 building block, and he says, for bigger and better  
2 things. That's Number 1, to show that we mean  
3 business. They didn't want to let me out. We mean  
4 business. Here's what it is. We're going to start  
5 moving on up. But from now on, we're going to start  
6 hitting the high-ups of the prison system.

7 Q. Now, did he also say anything about -- did  
8 you discuss with him the fact that you were going to  
9 be possibly involved in one way or another about --  
10 in the state Molina charges?

11 A. No. At this point in time, we had known  
12 that Mr. Armenta was cooperating with the State. He  
13 had made many statements.

14 Q. Okay. What did he tell you about Armenta?

15 A. We knew Armenta was cooperating. So he  
16 told me, he says, "Don't even trip about Kreaper" --  
17 which is Jerry Armenta -- "Don't trip about him. We  
18 got him. I got somebody going to his house to pay  
19 his family a visit."

20 Q. What did you take that to mean?

21 A. That means to pretty much make sure they  
22 told their son, or whoever they went to, to keep  
23 their mouth shut. That's when he says, "Just stay  
24 strong, don't rat, keep your head up, and be proud."

25 Q. Now, after that, did you subsequently, in



1 December, get arrested in that case?

2 A. Yes, ma'am. After that conversation took  
3 place, maybe a couple days later, they actually  
4 transferred me to Las Cruces on behalf of Li'l Jerry  
5 Montoya, because his state trial was getting ready  
6 to start. And about, I guess, a week -- the week  
7 that his trial was going to start, the State drops  
8 it. And that's when we found out that the feds  
9 stepped in, and we all got charged on this case now.

10 Q. Now, did you have a conversation with Rudy  
11 Perez at some point after he was arrested in this  
12 case?

13 A. Yes, ma'am.

14 Q. And where was that conversation at?

15 A. This was in Estancia, Torrance County  
16 Detention Facility.

17 Q. And you indicated previously that you were  
18 friends with Mr. Perez?

19 A. Yes, ma'am.

20 Q. And did he indicate to you anything about  
21 the fact that his -- well, parts of his walker had  
22 been used?

23 MR. VILLA: Objection, leading.

24 THE COURT: Overruled.

25 A. Yes, ma'am.

1 BY MS. ARMIJO:

2 Q. What did he say in reference to that?

3 A. He said that everyone has a part to play,  
4 and that was my part for the familia, to put in  
5 work. Because he couldn't do it himself due to his  
6 physical status at the time. So his part was to let  
7 him use his walker, the pieces from his walker.

8 Q. You said he indicated that everyone has a  
9 part to play?

10 A. Yeah. Everyone has a part to play. My  
11 part was: I gave them the walker. That was my  
12 part. And then he goes on to say, "Everyone has a  
13 part to play, down to the very last person; that  
14 their part could just be to keep their mouth shut."

15 MS. DUNCAN: Your Honor, could we have a  
16 limiting instruction?

17 THE COURT: You can only use that  
18 statement -- the testimony that was just given about  
19 what Mr. Perez said -- only in your consideration of  
20 the charges against Mr. Perez. You cannot use it in  
21 your discussion of the charges against the other  
22 three defendants.

23 Ms. Armijo.

24 BY MS. ARMIJO:

25 Q. And when he said "la familia," what did

1 you take that to mean?

2 A. The SNM, that's where we consider each  
3 other -- we call each other carnals, which means  
4 brother in Spanish. It's a family. That's -- so  
5 when he said everyone has a part, and that was my  
6 part, to contribute to la familia, he meant to the  
7 family, to the SNM.

8 Q. Now, and did you -- was that before you  
9 decided to cooperate?

10 A. Yes, ma'am.

11 Q. When did you decide to cooperate in this  
12 case, if you recall?

13 A. At the end of 2016.

14 Q. And did you have a meeting with the FBI  
15 and prosecution team about potential cooperation?

16 A. Prior to me, or --

17 Q. Prior to pleading guilty.

18 A. Yes, ma'am.

19 Q. And then did you, in fact, plead guilty on  
20 January 26 of 2017?

21 A. Yes, ma'am.

22 MS. ARMIJO: I'm going to move for the  
23 admission of Exhibits 676 and 677, which is the plea  
24 agreement and addendum.

25 THE COURT: Any objection from the

1 defendants?

2 MS. DUNCAN: No, Your Honor.

3 MR. VILLA: No, Your Honor.

4 MS. BHALLA: No, Your Honor.

5 THE COURT: Not hearing any objections,  
6 Government's Exhibits 676 and 677 will be admitted  
7 into evidence.

8 (Government Exhibits 676 and 677  
9 admitted.)

10 BY MS. ARMIJO:

11 Q. If we could please have 676. Oh, it's up.  
12 All right.

13 Are you familiar with this document?

14 A. Yes, ma'am.

15 Q. And what is it?

16 A. It's a copy of my plea agreement.

17 Q. Now, in going through that, I'm going to  
18 go to the second page. All right. And I'm looking  
19 at -- you pled to two counts; is that right?

20 A. Yes.

21 Q. Okay. You pled to a conspiracy to murder  
22 and an actual murder charge; is that correct?

23 A. Yes, ma'am.

24 Q. And for the murder charge, did you plead  
25 to a mandatory imprisonment of life?

1 A. Yes.

2 Q. And I'm referring to 5A. Is that what's  
3 reflected there?

4 A. Yes, ma'am.

5 Q. Then going to page 3, please. All right.

6 And do you see there that on 7A it says,  
7 "The United States has made and will make no  
8 agreement pursuant to the rules that a specific  
9 sentence is the appropriate disposition of this  
10 case." Do you see that?

11 A. Yes, ma'am.

12 Q. And then did you also -- and I'm going to  
13 ask that you display 677.

14 Are you familiar with this item? It's an  
15 addendum to your plea agreement.

16 A. Yes, ma'am.

17 Q. Okay. And I'm going to go -- and it has  
18 on the back page, I believe, which is the next page,  
19 your signature on it; is that correct?

20 A. Yes, ma'am.

21 Q. It says, "Timothy Martinez a/k/a Red"; is  
22 that correct?

23 A. Yes, ma'am, that's me.

24 Q. Okay. And what is your understanding of  
25 this addendum? And I'll go back to the first page

1 now.

2 A. What's my understanding of it?

3 Q. Yes.

4 A. That I've agreed to not only take a plea,  
5 but to be a cooperating witness within this trial.

6 Q. And what is the one thing that you have to  
7 do?

8 A. To testify truthfully, to give true  
9 statements, true facts, and to help out in any way,  
10 whether it be in any future proceeding, this  
11 proceeding, or any future proceeding, whether it be  
12 federal or state level.

13 Q. Now, when you made the decision to  
14 cooperate, were you moved from, as you say, your  
15 house? Was your housing situation moved from one  
16 situation to be with others once you decided to  
17 cooperate?

18 A. Yes, ma'am.

19 Q. And were you then housed with other  
20 persons who were cooperating?

21 A. Yes, ma'am.

22 Q. Did you have a tablet with you while you  
23 were pending these charges?

24 A. Yes, ma'am.

25 Q. And what was the purpose of the tablet?

1 A. To review all the discovery that pertained  
2 to this case.

3 Q. And is that something that every defendant  
4 that is being prosecuted by the federal government  
5 has?

6 A. Yes, it's our legal right to have.

7 Q. In this case, I should say?

8 A. Yes, it's our legal right to have a copy,  
9 and there's too much paperwork, so that's why we  
10 were issued tablets.

11 Q. And at some point in time did you tamper  
12 with your tablet?

13 A. Yes, ma'am.

14 Q. And by tampering with it, what were you  
15 allowed to do?

16 A. Before I tampered with it, I was allowed  
17 to review the discovery. Afterwards, I reset it. I  
18 found a way to reset the whole computer, the whole  
19 tablet to its factory settings, which allowed me to  
20 get Wi-Fi and Bluetooth and reset, pretty much,  
21 where I got all the Windows programs.

22 Q. And with that, you said you had internet  
23 access?

24 A. Yes, ma'am. We were -- right where I was,  
25 was in Sandoval County Federal Detention, so it's

1 located right next to a Walmart at -- like, the  
2 Walmart is not even 100 yards away from the jail.  
3 So we were able to pick up free Walmart wifi.

4 Q. Was that something you were supposed to  
5 do?

6 A. Absolutely not.

7 Q. What sort of things did you look at on the  
8 tablet?

9 A. I watched movies. I downloaded movies,  
10 music, created a Facebook page, and actually I was  
11 taking college classes and -- as a self-study. So I  
12 didn't have no teachers, and especially not in  
13 Sandoval County. There is no one there to help me,  
14 so I used it to help me on some of my math  
15 assignments. Google is good for everything. It  
16 helped me in math.

17 Q. All right. Did you do anything as far as,  
18 like, Facebook?

19 A. Yes, ma'am.

20 Q. What about porn?

21 A. Yes, ma'am.

22 Q. And at some point in time, was the tablet  
23 taken away?

24 A. Yes, ma'am.

25 Q. And since then, have you had your tablet?



1 A. No, ma'am.

2 Q. Now, did you also -- you indicated that  
3 you were a successful drug dealer while you were  
4 incarcerated?

5 A. Yes, ma'am.

6 Q. Did you continue, once you were arrested  
7 federally, with your drug-dealing activities?

8 A. Yes, ma'am.

9 Q. And where did you continue those  
10 activities?

11 A. I -- once I was in Estancia, I was selling  
12 while I was in Estancia, which is TCDF Torrance  
13 County, and also in Sandoval.

14 Q. And when you were in Estancia, you said  
15 you did so in Estancia; is that correct?

16 A. Yes, ma'am.

17 Q. And where else?

18 A. In Sandoval County.

19 Q. And how long has it been since you have  
20 stopped that activity?

21 A. Going on five months now.

22 Q. Was that something that you were allowed  
23 to do?

24 A. No, ma'am.

25 Q. Now, you decided -- did you -- why did you

1 decide to cooperate?

2 A. I wanted to just -- first of all, like I  
3 said, Javie was my friend. You know what I mean?  
4 And it really did weigh on me. I had that on my  
5 conscience a lot. And I started to turn a leaf  
6 again and I got back close with the Lord and  
7 everything, walking with the Lord, so I had -- I  
8 knew in order to ever ask for forgiveness, I had to  
9 do the right thing and I had to take responsibility.  
10 So when I agreed to cooperate, that was one of the  
11 main, main things, was to try to right a wrong that  
12 I committed. It's never going to bring back  
13 Mrs. Molina's son, but in my way I'm trying to right  
14 it the best I can.

15 Q. And from the time you committed or  
16 assisted in the Molina murder, how long did you have  
17 left to serve on your sentence?

18 A. I was -- at that time, which was March, I  
19 had 13 months.

20 Q. Thirteen months left?

21 A. Yes, ma'am.

22 Q. So have you finished your state sentence?

23 A. I'm actually -- the sentence -- yes, I'm  
24 on in-house parole right now. And I will discharge  
25 my state number, completely discharge parole,

1 everything, April 23 of this year.

2 Q. Okay. When you say you're in-house  
3 parole, that means you're serving your parole right  
4 now since you're incarcerated?

5 A. Yes, ma'am.

6 Q. You said for one thing you wanted to right  
7 it. Were there other reasons that you decided to  
8 cooperate?

9 A. I just wanted a new life. I wanted,  
10 pretty much, to stand on my own two feet. I was  
11 tired of being used. Because I felt I got used in  
12 that murder. I felt that at the end of the day,  
13 they didn't care one way or another about me as an  
14 individual, and that's -- for a family, that's not  
15 something do you in a family. You care about your  
16 brothers. You care. So I got tired of being used.  
17 I just wanted to stand on my own two feet. I wanted  
18 a new start, and I knew by cooperating, there would  
19 never be a chance for me to be able to go and say,  
20 "I want back in," because if I ever went that  
21 direction, it would end up in the same thing as  
22 Mr. Molina. So this gave me my key out, and pretty  
23 much shutting that door forever.

24 THE COURT: Would this be a good time to  
25 take our lunch break?

1 MS. ARMIJO: Yes, Your Honor. Thank you.

2 THE COURT: All right. We'll be in recess  
3 for about an hour. All rise.

4 (The jury left the courtroom.)

5 THE COURT: All right. See you back in an  
6 hour.

7 (The Court stood in recess.)

8 THE COURT: All right. We'll go on the  
9 record. Anybody need to discuss anything before we  
10 bring the jury in? Anything I can do for you, Mr.  
11 Beck?

12 MR. BECK: No, Your Honor.

13 THE COURT: How about from the defendants?  
14 Anybody got anything?

15 (The jury entered the courtroom.)

16 THE COURT: All right. Everyone be  
17 seated.

18 All right. Mr. Martinez, I'll remind you  
19 that you're still under oath.

20 THE WITNESS: Yes, sir.

21 THE COURT: And Ms. Armijo, if you wish to  
22 continue your cross-examination, you may do so.

23 MS. ARMIJO: Your Honor, I pass the  
24 witness.

25 THE COURT: Thank you, Ms. Armijo.

1 All right. Cross-examination of Mr.  
2 Martinez? Ms. Duncan?

3 MS. DUNCAN: I am, Your Honor. If I may  
4 just have a moment to get organized, Your Honor.

5 THE COURT: Certainly.

6 CROSS-EXAMINATION

7 BY MS. DUNCAN:

8 Q. Good afternoon, Mr. Martinez.

9 A. Good afternoon, ma'am.

10 Q. I'd like to start where Ms. Armijo stopped  
11 off, which is the reasons why you cooperated. And I  
12 think that you testified that you cooperated because  
13 you got close to the Lord; correct? And that was in  
14 January 2017?

15 A. Well, I've been close before, I walked  
16 with the Lord, strayed. And in fact, I was trying  
17 to find my way back.

18 Q. And since you got close to the Lord, you  
19 took over the drug trade in Sandoval County  
20 Detention Center?

21 A. I wouldn't say take it over, but I  
22 participated in it.

23 Q. You and Frederico Munoz realized there  
24 were drugs being brought into Sandoval County, and  
25 decided to take that on?

1 A. Yes.

2 Q. And since you got close to the Lord, you  
3 tampered with your tablet to access pornography;  
4 correct?

5 A. That and other things. Like I said, I  
6 needed help in my education, which I did graduate  
7 with my associate of arts, and that was my way of  
8 getting help.

9 Q. So you think graduating with your  
10 associates in arts outweighs breaking your tablet to  
11 view pornography?

12 A. No, ma'am. I know it wasn't right.

13 Q. Since you got close to the Lord, you also  
14 developed a romantic relationship with a  
15 correctional officer at Sandoval County Correctional  
16 Facility; correct?

17 A. Correct.

18 Q. Mr. Martinez, are you married?

19 A. At the time? Yes, I am currently married.  
20 But at the time, we were going through a divorce.

21 Q. And I'm guessing that the correctional  
22 officer was not your wife?

23 A. No, ma'am.

24 Q. I'd like to talk to you about the  
25 statements that you've given to law enforcement over

1 time.

2 A. Correct.

3 Q. And I'd like to start first with the  
4 statement that you gave on March 8 of 2014. That  
5 was the day after the Molina homicide; correct?

6 A. Correct.

7 Q. It was the next morning?

8 A. Yes.

9 Q. You were interviewed by Agent Alvarado and  
10 Agent Palomares; correct?

11 A. Yes, ma'am.

12 Q. And that interview was recorded, wasn't  
13 it?

14 A. As far as I know, yes.

15 Q. In fact, the interview is on the tablet  
16 that we've talked about holding all the discovery in  
17 this case; correct?

18 A. No, ma'am. The one that's on the tablet  
19 took place after the fact.

20 Q. That was the March 10th, 2014, interview?

21 A. Yes, ma'am.

22 Q. And during that interview, you claimed to  
23 know nothing about the murder; correct?

24 A. Which interview?

25 Q. I'm sorry, the March 8, 2014, interview.

1 A. Yes, ma'am.

2 Q. You claim that you went into Mr. Molina's  
3 cell to discuss putting on a spread?

4 A. Yes, ma'am.

5 Q. And you told the officers that you were  
6 not involved in the actual killing; correct?

7 A. Yes, ma'am.

8 Q. And that you just wanted to go home?

9 A. Yes, ma'am.

10 Q. And you knew at the time that if you were  
11 convicted of the Molina murder, you were not going  
12 to go home; correct?

13 A. Well, yes, ma'am.

14 Q. So you mentioned that you had  
15 interviewed -- well, also on March 8 of 2014 is when  
16 you talked to the STIU officers; correct?

17 A. Yes, ma'am.

18 Q. And you told them -- you started off  
19 telling them about this spread that you were going  
20 to put on; correct?

21 A. Yes. I was in there talking about food.

22 Q. And then later you told the STIU  
23 officer -- or you asked the STIU officer: "Do you  
24 want me to be straight honest"; correct?

25 A. Not during that interview.



1 MS. DUNCAN: Your Honor, if I could -- I'm  
2 looking at Bates No. 41134.

3 Q. I'm showing you this report.

4 A. All right.

5 Q. And on March 8 of 2014, you were  
6 interviewed by Ernie Holguin; correct?

7 A. Yes.

8 Q. And if you look here --

9 A. All right.

10 Q. Do you recall asking Mr. Holguin: "Do you  
11 want me to be straight honest?"

12 A. Yes, ma'am.

13 Q. And then afterward, you told Mr. Holguin  
14 that you went into Javier Molina's cell to get high  
15 with Mr. Molina?

16 A. Yes, ma'am. I did not recall saying,  
17 "I'll be honest with you." I do remember that  
18 conversation.

19 Q. And is that true, that you went into  
20 Mr. Molina's cell to get high?

21 A. Yes, ma'am. That was the plan. We were  
22 going to lure him in with drugs.

23 Q. And then you told Mr. Holguin that while  
24 you were in the cell, you seen them two coming in  
25 and you ran out?

1 A. Yes, ma'am.

2 Q. When Mr. Holguin asked you why, you said  
3 that you panicked, and you thought they were coming  
4 for you. And you said no; correct?

5 I'm sorry, that was a bad question. I'll  
6 start over.

7 Mr. Holguin asked you why, and you said  
8 that you panicked and ran out; correct?

9 A. Yep.

10 Q. Also in this report or when you were  
11 talking to Mr. Holguin, you made statements against  
12 various people and about their role in the SNM;  
13 correct?

14 A. I don't recall.

15 MS. DUNCAN: If I could approach, Your  
16 Honor.

17 THE COURT: You may.

18 BY MS. DUNCAN:

19 Q. I'm showing you Bates 41135.

20 A. Right here.

21 Q. The last paragraph. I don't want you to  
22 tell me what you said, but am I correct that you  
23 made a statement to Officer Holguin about your  
24 opinion of the different people's roles in the SNM?

25 A. Yes, ma'am. Those were the ones that were

1 currently at the facility at the time.

2 Q. So at that time when you gave those names,  
3 you were cooperating with Mr. Holguin; correct?

4 A. In a way, yes.

5 Q. The next statement you gave was on March  
6 10 of 2014; correct?

7 A. Yes.

8 Q. And that was to Sergeant Larcher and FBI  
9 Agent Roundy?

10 A. Yes.

11 Q. That was two days or three days after the  
12 murder of Javier Molina?

13 A. Yes, ma'am.

14 Q. That interview was recorded; correct?

15 A. Yes, ma'am.

16 Q. And I think you testified earlier that  
17 that recording is on the tablet?

18 A. Yes, ma'am.

19 Q. And that's the tablet that was provided to  
20 all the defendants in this case?

21 A. Yes, ma'am.

22 Q. And it was disclosed in August of 2016;  
23 correct?

24 A. The tablet or -- what do you mean?

25 Q. Your statement --

1 A. Yes, ma'am.

2 Q. -- was among the earliest of the  
3 discovery; correct?

4 A. Yes.

5 Q. Do you recall that the first discovery had  
6 to do with the murder of Javier Molina?

7 A. Yes, ma'am.

8 Q. And it included statements people had made  
9 at the time of the murder?

10 A. Yes.

11 Q. Including yours?

12 A. I think -- I could be wrong, but I thought  
13 mine came on -- we got them, then we sent them back  
14 to be updated. That's when I thought they had my  
15 recordings on there. I think it was in the second  
16 set.

17 Q. That was in 2016?

18 A. Yes, I'm hoping.

19 Q. And those -- the recordings were also  
20 disclosed in discovery in the state cases; correct?

21 A. I don't know. I was never charged by the  
22 state.

23 Q. Did you ever have a conversation with Mr.  
24 Montoya or Mr. Armenta about statements you had made  
25 to law enforcement in the state case?

1 A. No, ma'am.

2 Q. Did you think -- one moment.

3 MS. DUNCAN: I just had this, Your Honor.

4 Q. I'm showing you what's been admitted as  
5 Defendant's Exhibit FK.

6 MS. DUNCAN: Your Honor, may I approach?

7 THE COURT: You may.

8 BY MS. DUNCAN:

9 Q. We went over this a little bit on your  
10 direct examination. Do you remember this?

11 A. Yes, ma'am.

12 Q. And this is a revised statement that you  
13 gave for Jerry Montoya's lawyer; correct?

14 A. Yes, ma'am.

15 Q. And in that revised statement, you said --  
16 and we're going to go over this in more detail  
17 later -- but for now, you said, "I, Timothy  
18 Martinez, am writing this revised statement on my  
19 own free will due to the fact that the statement I  
20 gave on March 10th, 2014, was false"?

21 A. Yes, ma'am. I took that upon writing that  
22 myself. They did not know what I was going to say  
23 within that. Like I said, I had no prior knowledge  
24 what was on the State's discovery. So I didn't know  
25 if my statement was on there or not. But in order

1 to remake a statement, I had to clarify why I lied  
2 on the first one.

3 Q. And you were later interviewed by Mr.  
4 Montano's lawyers and the DA?

5 A. Yes, ma'am.

6 Q. And they talked to you about the statement  
7 you had made on March 10th, 2014?

8 A. Yes, ma'am.

9 Q. And that was in the State case; correct?

10 A. Yes.

11 Q. So the statement that you made in March  
12 10th of 2014 -- you made that statement about -- so  
13 it was a few days after the murder. And by that  
14 time, you knew that the killing of Javier Molina had  
15 been caught on video; correct?

16 A. Well, I knew -- yeah, I knew that -- they  
17 told me that, when I was in with Mr. Holguin and the  
18 STIU interview, that they had it on camera.

19 Q. And in your March 10th, 2014, statement,  
20 you told them the story about how you went in to do  
21 drugs with Mr. Molina; correct?

22 A. Yes, ma'am.

23 Q. And you were surprised when two men came  
24 rushing in?

25 A. Yes, ma'am.

1 Q. You said that you were getting high when  
2 you heard footsteps; correct?

3 A. Yes.

4 Q. And you didn't know if they were coming  
5 for you?

6 A. Yes, ma'am. We're in prison. You  
7 never -- when you hear loud noises or commotion, you  
8 never know what's going on. Anything can change in  
9 a split second in prison.

10 Q. But you knew why Mr. Armenta and Mr.  
11 Montoya were coming into that cell; correct?

12 A. I did.

13 Q. So when you said that you didn't know if  
14 they were coming for you, you knew they weren't  
15 coming for you?

16 A. I was covering for myself.

17 Q. So you admitted to the agents that you saw  
18 them running in; correct?

19 A. Yes, ma'am.

20 Q. But you didn't want to tell them who it  
21 was who ran into the cell?

22 A. No, I did not, ma'am.

23 Q. But you did tell the agents that when  
24 inside the cell, you saw a point?

25 A. Yes.

1 Q. And what is a point?

2 A. It's a weapon, a homemade shank, homemade  
3 weapon, homemade knife.

4 Q. And eventually you told the agents on  
5 March 10th, 2014, that you recognized the men who  
6 came into Javier Molina's cell?

7 A. No, I did not.

8 Q. Agent Roundy asked you, "You didn't  
9 recognize who they were?"

10 And you responded, "At first, no";  
11 correct?

12 A. Yes.

13 Q. And then Agent Roundy asked you, "Who came  
14 out of the cell?"

15 And you responded, "I saw them when they  
16 came out. I can't -- my life would be next if" --  
17 correct?

18 A. At that time, yes.

19 Q. So you saw the men who came out?

20 A. Yes.

21 Q. So you eventually told law enforcement  
22 that you recognized the men who had rushed into  
23 Javier Molina's cell, though you did not tell them  
24 the names of those men; correct?

25 A. Yes, ma'am, knowing for the fact, if I



1 did, my name would be put in the hat, meaning I'd  
2 have a hit on me.

3 Q. Have you ever heard of the term "dry  
4 snitching"?

5 A. Yes, ma'am.

6 Q. What is dry snitching?

7 A. Telling without telling.

8 Q. And you knew at the time that the camera  
9 had captured Jerry Armenta and Jerry Montoya rushing  
10 into Javier Molina's cell; correct?

11 A. Yes, ma'am.

12 Q. And you told law enforcement that the two  
13 men who rushed into Javier Molina's cell had a  
14 point; correct?

15 A. At that time, I told them.

16 Q. I'm not asking -- is that correct, that  
17 you told them you had a point?

18 A. Yes.

19 Q. Thank you. And they asked you to tell  
20 them the names of the men that ran in, you refused  
21 to do so, and just said, "The cameras tell it all";  
22 correct?

23 A. Yes, ma'am.

24 Q. But you provided some details about Mr.  
25 Armenta and Mr. Molina -- Mr. Armenta and Mr.

1 Montoya; correct?

2 A. Yes.

3 Q. For example, you told law enforcement that  
4 one of them was a big fan of Tupac?

5 A. Yes, ma'am.

6 Q. And that would identify Mr. Armenta;  
7 correct?

8 A. No.

9 Q. Is it Mr. Montoya who is the big fan of  
10 Tupac?

11 A. Yes, ma'am.

12 Q. You also told law enforcement that you  
13 heard the two men call Javier Molina a rat?

14 A. Yes, ma'am.

15 Q. And by "them," you meant Jerry Armenta and  
16 Jerry Montoya?

17 A. Yes, ma'am.

18 Q. As you continued talking in your  
19 interview, you eventually asked the agents what you  
20 could do to help with their investigation; correct?

21 A. Yes, ma'am.

22 Q. You affirmed and told the agents that the  
23 cameras captured what had happened in the attack on  
24 Javier Molina?

25 A. Yes, ma'am.

1 Q. You asked the agents whether they could  
2 protect you and your family?

3 A. Yes, ma'am. And they said --

4 Q. I didn't ask what they said. I just  
5 asked, did you tell them that?

6 A. Yeah.

7 Q. And you told them that you wanted to talk  
8 to your wife before making the decision to  
9 cooperate; correct?

10 A. Not necessarily. Well, I told them I need  
11 to talk to my wife. I have a lot of things, but I  
12 wasn't necessarily saying I was going to cooperate;  
13 that it wasn't a decision I could make on my own,  
14 because I did have a wife and kids.

15 Q. So you said you wanted to talk to your  
16 wife before you did anything.

17 A. Yes.

18 Q. So you would agree that the statement you  
19 gave on March 10th, 2014, constituted dry snitching?

20 A. Yes, ma'am.

21 Q. The next statement that you gave was on  
22 September 4 of 2014; correct?

23 A. Of which year, ma'am?

24 Q. September 2014. Let me ask you this: Did  
25 you write a statement for Defendant Jerry Montoya?

1 A. Yes, ma'am.

2 Q. I think you said that you wrote that of  
3 your own volition?

4 A. Yes.

5 Q. And you wrote actually a number of  
6 statements for him; correct?

7 A. That was the one that I wrote. I don't  
8 recall. Which other ones did I write?

9 Q. You wrote three in toto; correct?

10 A. No, I wrote them -- one in -- for his  
11 writeup. But I really don't recall which other ones  
12 you're talking about.

13 MS. DUNCAN: Your Honor, I'm going to  
14 approach with what's been marked as Defendants'  
15 Exhibit FO.

16 Your Honor, may I approach?

17 THE COURT: You may.

18 BY MS. DUNCAN:

19 Q. I'm showing you what's been marked as  
20 Defendants' FO. Could you look that over?

21 A. All right. There you go, ma'am.

22 Q. Do you recognize that, Mr. Martinez?

23 A. Yes, ma'am.

24 Q. Is that a statement that you wrote?

25 A. It wasn't one that was used. It was a

1 rough draft of the one that's been submitted before.

2 Q. I'm sorry. My question was: Is this a  
3 statement that you wrote?

4 A. Yes.

5 Q. And it's a statement dated September 4 of  
6 2014?

7 A. I didn't see the date, but yes, if that's  
8 the date on there, then that's when it's wrote.

9 MS. DUNCAN: Your Honor, at this time I'd  
10 move the admission of Defendants' Exhibit FO.

11 THE COURT: Any objection, Ms. Armijo?

12 MS. ARMIJO: Your Honor, we don't have a  
13 copy of it. It hasn't been provided. So after I  
14 have a copy to see it -- no objection.

15 THE COURT: Anybody else have any  
16 objection from the defendants?

17 Not hearing any objection, Defendants'  
18 Exhibit FO will be admitted into evidence.

19 (Defendants' Exhibit FO admitted.)

20 BY MS. DUNCAN:

21 Q. Mr. Martinez, tell us how you wrote this  
22 document. How did --

23 A. How did it come about?

24 Q. Yes, please.

25 A. Well, there was a plan that Jerry Armenta

1 was going to take the blame for the murder. So both  
2 me and Mr. Armenta wrote Mr. Montoya a statement to  
3 get him off. Because, like I say, at the time, I  
4 wasn't charged; I was just helping Jerry Montoya get  
5 off.

6 Q. And did you and Mr. Armenta talk about  
7 your statements before you wrote them?

8 A. No.

9 Q. Did you talk to Mr. Montoya about your  
10 statement before you wrote It?

11 A. I told him I was going to write him one.  
12 And that's when I wrote that, shot it to him. He's,  
13 like, tried to tweak it a little, put this, this.  
14 And it eventually came out to be the very first one  
15 that Ms. Armijo entered.

16 Q. As you say, you wrote the statement and  
17 gave it to Mr. Montoya, and then he came back to you  
18 and said: "Can you make these changes for me?" Is  
19 that correct?

20 A. Yes.

21 Q. Did you discuss this document with Mario  
22 Rodriguez?

23 A. No.

24 Q. Where were you when you wrote this  
25 document?

1 A. I was at the North in Santa Fe.

2 Q. And who was with you at that time?

3 A. Jerry Montoya was in the pod. There were  
4 several SNM members. I know Jerry Montoya. My  
5 neighbor was Jeremiah Martinez.

6 Q. And was Jerry Armenta in the pod with you?

7 A. No.

8 Q. How about Mario Rodriguez?

9 A. Mario was downstairs. Me and Jerry  
10 Montoya both lived upstairs. Mario was downstairs.  
11 Armenta was in the pod nextdoor to us.

12 Q. Was Jerry Montoya your neighbor?

13 A. No, ma'am. Over there there's 12 cells in  
14 each pod. I lived in -- I can't remember the  
15 number, but I lived on one corner, and he lived all  
16 the way down the tier on the other corner.

17 Q. If we could start with the first  
18 paragraph.

19 Mr. Martinez, I have up on the screen  
20 Defendants' Exhibit FO. If you could read this,  
21 please, to the jury.

22 A. "My name is Timothy Martinez, Inmate  
23 Number 62543. I am incarcerated in the NMDOC. I am  
24 giving this written statement to account for the  
25 incident that took place on March 7, 2014, at SNMCF,

1 which resulted in the death of inmate Javier Molina,  
2 Inmate Number 47299. The actions I am going to  
3 speak about is true to my knowledge, due to  
4 first-hand observation by me."

5 Do I continue reading, ma'am?

6 Q. Please.

7 A. "On the afternoon of March 7, 2014, at  
8 SNMCF in 1-A B pod, me, the victim Javier, and  
9 another individual were in Javier Molina's cell 105,  
10 getting high on Suboxone. After we had finished  
11 using, it was supposed to be Jerry Montoya, Inmate  
12 Number 55095 and another individual's turn to go get  
13 high in that cell. So when I finished using and  
14 getting high in that cell, I motioned for Jerry  
15 Montoya to come in, because it was his turn. At  
16 this time, Jerry Montoya and another individual  
17 entered cell 105."

18 Q. I'll stop you there. And who is the other  
19 individual you were referring to?

20 A. On the very top part or the second?

21 Q. When you just read that "At this time" --

22 A. The last sentence?

23 Q. -- "another individual entered the cell."

24 A. That would be Jerry Armenta.

25 Q. Thank you. Continue.



1           A.     "When they entered, Mr. Javier Molina  
2 started to get verbally abusive and disrespecting."

3           Q.     Let me stop there. Was that true?

4           A.     No.

5           Q.     And who came up with that statement?

6           A.     That was just my way of -- because Javier  
7 was known to be a bully, so it would be the most  
8 believable thing at the time.

9           Q.     So it was a credible statement because  
10 other witnesses would confirm he was a bit of a  
11 bully?

12          A.     Yes, ma'am.

13          Q.     Did you discuss with anyone else this  
14 assertion that you were going to claim that Javier  
15 Molina had gotten verbally abusive?

16          A.     No, I wrote it, I gave it to him, to Mr.  
17 Montoya, and whoever he discussed with, I have no  
18 clue. When I wrote this, I didn't let anyone know  
19 what I was writing or how I wrote it.

20          Q.     So this is a statement by you alone?

21          A.     Yes, ma'am.

22          Q.     Continue reading.

23          A.     "So at this time Jerry Montoya and another  
24 individual entered cell 105. When they entered,  
25 Mr. Javier Molina started to get verbally abusive

1 and disrespecting. At this time, I exited the room,  
2 and so does one other individual."

3 Q. Let me stop there. Who is the other  
4 individual you're referring to here?

5 A. Mario Rodriguez.

6 Q. And is that true, that at that time you  
7 exited the room, and so did Mario Rodriguez?

8 A. No, ma'am. None of this is true.

9 Q. Keep reading.

10 A. "From what I saw, Mr. Molina was not  
11 directing his attention to Jerry Montoya. So Mr.  
12 Montoya was fixing up a shot for himself. At no  
13 time" --

14 Q. Let me stop you. I'm sorry, I meant to  
15 ask you one other question. When you said, "At this  
16 time I exited the room and so does one other  
17 individual," why did you write that?

18 A. Because we were done getting high. That  
19 would be -- our story was, we were in there getting  
20 high. I called them in to get high. The rooms are  
21 small. There's no way enough room -- if you have  
22 the diagram or layout of the cells in Cruces, it's a  
23 little walkway about three feet wide, maybe seven  
24 feet long. There's not enough room for all these  
25 people in there, so --

1 Q. At the time you wrote this statement, you  
2 knew that a video had caught you and Mario Rodriguez  
3 walking out of Mr. Molina's cell; correct?

4 A. Yes, ma'am.

5 Q. So this statement would be consistent with  
6 the independent evidence of the murder; correct?

7 A. Yes, ma'am.

8 Q. Okay. Keep reading.

9 A. "At no time did I ever witness Jerry  
10 Montoya with any kind of weapon when we were all  
11 inside the room. In fact, Jerry Montoya was" --

12 Q. I'm going to stop you there. So was that  
13 true?

14 A. No, that's false, because I did see him  
15 with the weapon.

16 Q. I think we're about five lines from the  
17 top.

18 A. "In fact, Montoya was just focused on  
19 getting high. Once I exited the cell, I go  
20 downstairs to the common area. The next time I saw  
21 Jerry Montoya, he was at the bottom of the  
22 stairwell, where Mr. Molina looked to be acting  
23 aggressively towards Jerry Montoya."

24 Q. I'm going to stop you there. And was that  
25 true?

1 A. Yes, ma'am.

2 Q. So when --

3 A. Well, no, it's not, because the next time  
4 I saw him was when Jerry walked out of the room.  
5 But at the bottom of the stairwell, yes, Javier did  
6 get in a fighting stance towards Mr. Montoya.

7 Q. Okay. And is that something that you knew  
8 was captured on the video?

9 A. Yes, ma'am.

10 Q. So by making a statement that corresponded  
11 with the video --

12 A. I don't know it was captured. Because I  
13 hadn't seen the video. But I knew where the  
14 videos -- I know where the cameras were placed. So  
15 I assumed that. I had never seen the video of it,  
16 so I didn't know exactly what was captured on it. I  
17 just knew, by what STIU had told me, that we have  
18 the whole thing on camera, and I knew where the  
19 exact videos were. At that time, I didn't even know  
20 the camera pointing into my room didn't work. I  
21 figured they had me going in and out of my room the  
22 whole time also. So at no point did I see the  
23 video.

24 Q. But you were writing the statement. So if  
25 someone was to read it and compare it to the video,

1 they would correspond?

2 A. Yes, ma'am.

3 Q. And that would make your statement more  
4 credible to whoever was reading it?

5 A. Yes, ma'am.

6 Q. Continue reading.

7 A. "At which time, Jerry Montoya took a  
8 fighting stance to defend himself. I saw Jerry  
9 Montoya punch Mr. Molina a few times to get away  
10 from Molina. At no time during this exchange did I  
11 observe Jerry Montoya with any kind of weapon. At  
12 this, I conclude this statement. This is the true  
13 events on my eye account. I intend this statement  
14 to override any prior statement I may have made,  
15 making anything said to this point null and void."

16 Q. And when you talk about you intend this  
17 statement to override any prior statement that you  
18 may have made, you're referring to the March 10th --

19 A. Any statement that I'd made prior to that.

20 Q. The next page, please.

21 And if you could read that paragraph under  
22 "Declaration Under Penalty of Perjury."

23 A. "Declaration Under Penalty of Perjury.  
24 The undersign declares under penalty that he is  
25 truthful and correct in everything that was written

1 down."

2 Q. Let me stop you there. Do you understand  
3 what perjury is?

4 A. Yes. I have perjured in this statement by  
5 making false accusations, by lying to the Court,  
6 yes.

7 Q. That it's a crime for you to lie to the  
8 Court?

9 A. Yes, ma'am.

10 Q. So by including this declaration, you were  
11 intending to give weight to your statement; correct?

12 A. Yes, ma'am.

13 Q. It was something you were making, knowing  
14 you could be prosecuted if it was false?

15 A. Yes, ma'am.

16 Q. Okay. Continue reading.

17 A. "Making this written statement a legal  
18 document in the case of Jerry Montoya versus the  
19 State of New Mexico. Respectfully submitted by  
20 Timothy A. Martinez, 62543, PNM" --

21 Q. You can stop there.

22 A. Okay.

23 Q. So you were aware, when you wrote this  
24 statement, that it might be used in a court of law;  
25 correct?

1 A. Yes, ma'am.

2 Q. And then you testified that after you  
3 wrote this statement, you gave it to Mr. Montoya,  
4 and he sent back some revisions; correct?

5 A. Yes, ma'am.

6 Q. I'd like to show you what has been  
7 admitted as Defendants' Exhibit FK.

8 MS. DUNCAN: May I approach, Your Honor?

9 THE COURT: You may.

10 A. This is the one that's already been  
11 entered; right?

12 BY MS. DUNCAN:

13 Q. Yes, this is Defendants' Exhibit FK. So  
14 this statement is dated November 3, 2014; correct?

15 A. Yes, ma'am.

16 Q. Is this the statement that you wrote after  
17 you conferred with Mr. Montoya?

18 A. Yes, ma'am. That's the final draft.

19 Q. If we can go to the revised. Thank you.

20 So can you tell -- before we read this  
21 statement, what changes did Mr. Montoya want you to  
22 make?

23 A. He wanted it to be more where it's just  
24 pretty much -- because he started pointing out,  
25 "Well, this ain't looking good; this ain't looking

1 good. Put in there that he is a bully." I mean,  
2 why he made any prior statements. You know what I  
3 mean? So that's where we came up with this one.

4 For the more Suboxone use, that he came to  
5 the conclusion that it would look better if I said I  
6 was heavily under the influence of drugs. Any prior  
7 statement would look like I was in a drug-induced  
8 haze.

9 Q. So you said a couple of things there. So  
10 he said to you that he wanted more about Mr. Molina  
11 being a bully; is that correct?

12 A. Yeah, he wanted to make sure that -- he  
13 wanted to reiterate the reason I'm doing it, like I  
14 say, was I'm under the influence of narcotics. I  
15 mean, right there, I was afraid, you know what I  
16 mean, saying, "Why did you make that statement?"  
17 Because I was afraid of what was going on. I was  
18 afraid of being prosecuted. I was afraid of  
19 everything in that aspect.

20 Q. So at the time that you wrote this revised  
21 statement, Mr. Montoya was aware that you had  
22 previously given a statement to the police; correct?

23 A. Yes, ma'am. I'm sure he had the State  
24 discovery. He was charged in the state. I had  
25 still never seen it.



1 Q. Okay. If you could start reading this.

2 A. "Revised statement. I, Timothy Martinez,  
3 am writing this revised statement on my own free  
4 will due to the fact that the statement I gave on  
5 March 10, 2014, was false and made-up. So with that  
6 said, I want to recant my original statement and  
7 provide this one. I had made up that stuff because,  
8 Number 1, I was afraid. Number 2, I was heavily  
9 under the influence of Suboxone. And Number 3,  
10 Mr. Molina was my friend, and I did not want to say  
11 the truth about him starting it.

12 "So I am now going to give an account of  
13 what happened. Me, Molina, and one other individual  
14 were inside Molina's cell getting high on Suboxone.  
15 After I was done getting high, I called Jerry  
16 Montoya and one other individual into the room so  
17 they could get high."

18 Q. Let me stop you here. So this statement  
19 that you just made about calling Jerry Montoya and  
20 one other individual into the room to get high --  
21 that's the same statement you made in the earlier  
22 September version?

23 A. Yes.

24 Q. And was that true?

25 A. No, ma'am.

1 Q. Keep going. I'm sorry, did Mr. Montoya  
2 ask you to make any changes to that part of the  
3 story about calling him in to use Suboxone with you?

4 A. No.

5 Q. Continue.

6 A. "After I was done getting high, I called  
7 Jerry Montoya and one other individual into the room  
8 so they could get high. At this time I gave Jerry  
9 Montoya a piece of Suboxone. I also gave a piece to  
10 the other individual. This is when an argument  
11 between Javier Molina and the other individual  
12 started arguing about using the syringe. Jerry  
13 Montoya was writing" --

14 Q. Stop there. So when you say that Javier  
15 Molina and the other individual started arguing  
16 about using the syringe, who was the other  
17 individual?

18 A. Jerry Armenta.

19 Q. And is this one of the facts that you had  
20 discussed with Mr. Montoya?

21 A. At this time, him and Armenta were down  
22 there talking and figuring out how they want it to  
23 be. So, yes, he said that that needed to be put in  
24 there, because that was what Armenta was saying,  
25 too, that he went in, he was trying to claim

1 self-defense, saying that Molina was threatening him  
2 and starting it over a syringe.

3 Q. So Mr. Molina and -- Mr. Armenta and Mr.  
4 Montoya had tried to get their stories together and  
5 have your story match their story; correct?

6 A. Yes, ma'am.

7 Q. And did they specifically tell you to  
8 mention that the fight was about a syringe?

9 A. Well, it wasn't -- that was just the  
10 initial part. That was the initial part of him  
11 saying, "All right." That was, like, the reason to  
12 start an argument. It wasn't the sole reason of the  
13 argument. That was just the reasoning to start it.  
14 Because the syringe would be -- a lot of people in  
15 prison culture, they use drugs intravenously, they  
16 shoot up, you know what I mean? So when he says,  
17 "No," you say about the syringe, it's a common  
18 thing. Anyone that knows prison would know  
19 syringes, drugs, prison all go hand in hand.

20 Q. So it's common for people who use drugs in  
21 prison to argue over syringes?

22 A. Yes, it is.

23 Q. So it's something that other witnesses  
24 could corroborate?

25 A. Yes.

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1 Q. Okay. Continue, please.

2 A. "Jerry Montoya was waiting to get high,  
3 but never did, because Javier Molina was too busy  
4 arguing with the other individual. At no time did I  
5 personally ever see Jerry Montoya act aggressively  
6 or combative toward Javier Molina. I can also say I  
7 never saw Jerry Montoya with any type of weapon.  
8 End of statement."

9 Q. And those last two statements here, that  
10 at no time did you personally ever see Jerry Montoya  
11 act aggressively or combative towards Javier  
12 Molina -- was that the truth?

13 A. No, ma'am.

14 Q. And did anyone help you write that  
15 statement?

16 A. No, ma'am. Well, I wrote it on my own,  
17 but they gave me -- Jerry Montoya gave me his input  
18 on what I needed. They didn't tell me how to write  
19 it. I wrote it on my own. But they said: "Mention  
20 this, this, and this."

21 Q. And is this one of the things that Jerry  
22 Montoya mentioned that he wanted you to add in your  
23 letter?

24 A. No, because that's pretty much what I said  
25 in the first letter.

1 Q. So can you tell me, looking at this, which  
2 parts -- I wonder if I could just do it on the Elmo.  
3 Please switch over.

4 Which parts of this Jerry Montoya or Jerry  
5 Armenta helped you -- or had input in writing? Can  
6 you see it there?

7 A. It's kind of dark. The part being, I was  
8 afraid, Number 1, because in my March 10th, that was  
9 the reason I said there's people running in and I  
10 was afraid.

11 Q. It wasn't -- when you were saying that you  
12 were afraid, this was a reason to explain why you  
13 had given a false statement?

14 A. Yes. You know what I mean? So -- and my  
15 previous statement on March 10th would show that I  
16 had been afraid, whether it was for my life, or  
17 whatever; I was just nervous and afraid of being  
18 charged, period. I was heavily under the influence  
19 of Suboxone; he wanted me to add that.

20 Q. Again, by saying that you're heavily under  
21 the influence of Suboxone, that would explain why  
22 you would give a false statement implicating him;  
23 correct?

24 A. Yes, ma'am. He wanted me to -- actually,  
25 it was his idea for him to mention my friendship

1 with Javier, you know what I mean, because I didn't  
2 mention anywhere in my first statement how close me  
3 and Javier were. You know what I mean?

4 Q. Did he tell you why he wanted you to  
5 mention your friendship with Javier?

6 A. Because he said that would be a good  
7 reason why you wanted to lie, to keep him out of it.  
8 Like I was pretty much protecting Javier.

9 Q. So you were protecting Javier's memory  
10 from an allegation that he had been aggressive?

11 A. That, and at the end of the day, he wanted  
12 me to say it so I could protect him, and it would  
13 show -- yeah, like I said, perfect; didn't want  
14 to -- the man is dead, unfortunately. You know what  
15 I mean? And like I say, I'm not proud of that  
16 action at all and being part of it. But he says,  
17 "That would be a great way, use your friendship to  
18 say you were trying to cover up, to help keep his  
19 name halfway good, so he didn't look like a bad  
20 guy."

21 Q. And -- okay. And it makes the statement  
22 more credible, is why you did it?

23 A. Yes, ma'am.

24 Q. Anything else in this statement that Mr.  
25 Montoya gave you input on?

1           A.     The syringe part, saying why, that they  
2 needed that part in there to say it started over a  
3 syringe.

4           Q.     Anything else?

5           A.     No, ma'am.

6           Q.     And after giving -- did you give a  
7 statement to Mr. Montoya?

8           A.     I gave to it him so he could mail it to  
9 his lawyer.

10          Q.     And after you gave this -- I'm sorry, let  
11 me go to page 2 of this. So on the back we have  
12 here a "Declaration Under Penalty of Perjury";  
13 correct?

14          A.     Yes, ma'am.

15          Q.     And again, you added this here because you  
16 understood that it was a crime to lie to the Court?

17          A.     Yes, ma'am.

18          Q.     And so signing under declaration of  
19 penalty of perjury gave weight to your statement?

20          A.     Yes, ma'am.

21          Q.     After writing this statement in November  
22 of 2014, you wrote one more statement for Mr.  
23 Montoya; correct?

24          A.     I don't know.

25          Q.     Did you give a declaration, an affidavit

1 to his counsel?

2 A. Yeah. I didn't write that. His counsel  
3 wrote that up, and I just signed it. So I did not  
4 write it up at all. Mr. Esparza was his lawyer at  
5 the time. He's the one that came up with it after  
6 the interview that we did. Because I was going to  
7 be Mr. Montoya's witness. He came up with those  
8 points and said: "All right, what are you willing  
9 to sign off on?"

10 Q. And you made some corrections to the  
11 affidavit; correct?

12 A. Yes, me and my counsel did. I had a  
13 lawyer at the time, which is actually the lawyer on  
14 the state case, which is Mr. Steven Almanza.

15 MS. DUNCAN: Your Honor, can I approach?

16 THE COURT: You may.

17 BY MS. DUNCAN:

18 Q. Mr. Martinez, I'm showing you what's been  
19 marked as Defendant's Exhibit FP.

20 A. Yes, I remember this.

21 Q. Is that the affidavit that Mr. Montoya's  
22 lawyer wrote and you made handwritten changes to?

23 A. Yes, ma'am. Mr. Montoya's lawyer gave it  
24 to my lawyer, and my lawyer brought it to me. And  
25 me and my lawyer went over it and made some changes



1 to it. Then my lawyer took it back to his.

2 MS. DUNCAN: Your Honor, we would move to  
3 admit Defendants' Exhibit FP.

4 THE COURT: Any objection, Ms. Armijo?

5 MS. ARMIJO: No, Your Honor.

6 THE COURT: Any objection from any other  
7 defendants?

8 MR. JEWKES: Just for clarification, what  
9 is the exhibit number again?

10 MS. DUNCAN: Exhibit FP, as in Peter.

11 THE COURT: Not hearing any objection,  
12 Defendants' Exhibit FP will be admitted into  
13 evidence.

14 (Defendants' Exhibit FP admitted.)

15 BY MS. DUNCAN:

16 Q. Mr. Martinez, this is an affidavit by you;  
17 correct?

18 A. Yes, ma'am.

19 Q. And it's an affidavit that was drafted  
20 after you submitted to an interview with Mr.  
21 Montoya's attorney and the district attorney in the  
22 state case; correct?

23 A. Yes, ma'am.

24 Q. And during that interview, you told the  
25 state prosecutor and Mr. Montoya's attorney that you

1 never saw Jerry Montoya stab Mr. Molina; correct?

2 A. Yes, ma'am.

3 Q. And this affidavit is confirming that  
4 statement that you gave to the prosecutor, Mr.  
5 Montoya's attorney; correct?

6 A. Yes, ma'am.

7 Q. If you could read paragraph 3 of the  
8 affidavit?

9 A. "As I informed both parties of this  
10 interview, I did not see Jerry Montoya stab Javier  
11 Molina, nor I did ever see him with a weapon."

12 Q. Is that statement true or false?

13 A. That's false.

14 Q. And you said that you wrote in the  
15 corrections -- or is that your handwriting: "Did I  
16 ever see him with a weapon?"

17 A. Yes, ma'am. I marked it out where -- you  
18 could see where I scratched out what they had, and I  
19 added in what I --

20 Q. And you wrote that statement in  
21 consultation with your lawyer; correct?

22 A. Yes, ma'am.

23 Q. Did you tell your lawyer that the  
24 statement was true?

25 A. My -- yes, yes, ma'am.

1 Q. And is it true?

2 A. No, ma'am.

3 Q. And if you could read paragraph 4.

4 A. "The only thing I saw Jerry Montoya do is  
5 fight with his fists with Javier Molina." That also  
6 is false.

7 Q. Number 5, please.

8 A. I cannot read it.

9 Q. Here. We're going to get it for you.

10 A. "The only person that I saw with any  
11 weapon and use it on Javier Molina was Jerry  
12 Armenta. I saw Mr. Armenta stab and kick Javier  
13 Molina repeatedly on March 7, 2014."

14 Q. Was this statement true or false?

15 A. That's false.

16 Q. You also saw Mr. Montoya with a weapon;  
17 correct?

18 A. Yes, ma'am.

19 Q. If you could read paragraph 7.

20 A. "That in no way did I participate in the  
21 murder of Javier Molina or know that Javier Molina  
22 would be stabbed on March 7, 2014."

23 Q. Is that true or false?

24 A. False.

25 Q. And did you tell your attorney it was

1 true?

2 A. At that time, yes. At that time, like I  
3 say, I was never criminally charged. I just hired  
4 an attorney to advise me during this.

5 Q. And you -- but you said you reviewed this  
6 with your attorney, made the corrections with your  
7 attorney; correct?

8 A. Yes, ma'am.

9 Q. And then you signed this affidavit upon  
10 penalty of perjury; correct?

11 A. Yes.

12 Q. Under an oath to tell the truth; correct?

13 A. I signed it at the state penitentiary.  
14 There's no officials other than my lawyer there when  
15 I signed it. So I never officially took an oath. I  
16 knew what I was signing, but I never officially took  
17 an oath. I signed it in the visiting room.

18 Q. Can we look at the top of that document,  
19 or just right there?

20 So right under the header "Affidavit of  
21 Timothy Martinez," it says, "I, Timothy Martinez,  
22 upon oath, do state the following."

23 A. Right. Like I said, I never took a formal  
24 oath. I knew it was a legal document, so I knew  
25 what it was.

1 Q. When you said "upon oath," what did you  
2 mean?

3 A. That I was saying the truth; that I was  
4 going to get up on the stand and say, yes, that's,  
5 in fact, what happened.

6 Q. And you took an oath when you testified  
7 today; correct?

8 A. Yes, ma'am.

9 Q. Mr. Montoya's case never went to trial  
10 because the federal government took over the  
11 prosecution; correct?

12 A. Yes, ma'am.

13 Q. So you were also indicted in December of  
14 2015?

15 A. Yes, ma'am.

16 Q. You were charged with the murder of Javier  
17 Molina; correct?

18 A. Yes, ma'am. And also conspiracy to it.

19 Q. And in December of 2016 is when you  
20 decided to cooperate with the federal government;  
21 correct?

22 A. Yes, ma'am.

23 Q. Up until that point, you'd been housed  
24 with other defendants in this case; correct?

25 A. Yes, ma'am.

1 Q. And can you tell me, please, who are the  
2 other defendants you were housed with?

3 A. For the first six months I was housed in  
4 Otero County, right here in Chaparral, New Mexico.  
5 In my housing unit, where I was, was myself, David  
6 Calbert, Joe Lawrence Gallegos, Allen Patterson,  
7 Christopher Chavez, Leonard Lujan, Billy Garcia,  
8 Arturo Garcia, Eugene Martinez, Edward Troup. There  
9 might be a few more. I'm not sure. There's a good  
10 handful. Conrad Salazar. He's not officially in  
11 this case, but he's an SNM member.

12 Q. Were you housed with Jerry Montoya?

13 A. Jerry Montoya, yeah. Chris Garcia.

14 Q. And long were you in Otero County?

15 A. I was there for six months. Not all of  
16 those individuals were there for six months. Some  
17 of them were there for four or five months before  
18 some of them got shipped to Estancia, which is  
19 Torrance County. That was in my housing unit. The  
20 other housing unit was Carlos Herrera, Daniel  
21 Sanchez, Mario Rodriguez, Archie Varela, and for a  
22 short period of time was Roy Martinez.

23 Q. So were you transferred to Otero County  
24 right after the indictment in early December 2015?

25 A. Yes, ma'am.

1 Q. And then you were there for six months  
2 till June of 2016?

3 A. Yes, ma'am.

4 Q. At that point, you went to Torrance  
5 County?

6 A. Yes, ma'am. We had a court hearing in  
7 Albuquerque. And at that hearing, me and Mr.  
8 Herrera were switched out. Mr. Carlos Herrera was  
9 in Estancia, and I was in Otero, and they switched  
10 us two out.

11 Q. How long were you in Torrance County  
12 Detention Center?

13 A. For six months.

14 Q. So until you decided to cooperate?

15 A. Yes, ma'am.

16 Q. Who was in Torrance County with you?

17 A. Okay. Mr. Perez, Antone Cordova, Andrew  
18 Gallegos, Manuel Benito, Daniel Archuleta, Vincent  
19 Garduno, Edward Troup, David Calbert, Mandel Parker,  
20 myself, Arturo Garcia, Sergio Rodriguez, Jerry  
21 Montoya, Billy Garcia. I know I'm probably missing  
22 a few in there.

23 Q. That's good. Thank you for that.

24 A. Richard Gallegos. Yeah, there was a good  
25 handful of us over there in that pod. There was

1 more out on the line, but the ones directly involved  
2 in this case, we were all housed in one pod.

3 Q. Now, January 26, 2017, is when you signed  
4 the guilty plea; correct?

5 A. Yes, ma'am.

6 Q. And you also signed the addendum to the  
7 plea agreement?

8 A. Yes, ma'am.

9 Q. Where you agreed to testify for the  
10 Government?

11 A. Yes, ma'am.

12 Q. And you understand from the addendum that  
13 whether or not you get a reduced sentence in this  
14 case depends in the first instance on the people at  
15 this table; correct?

16 A. What do you mean?

17 Q. They get to decide whether to file a  
18 motion for a downward departure?

19 A. Yes, ma'am.

20 Q. And they don't have to?

21 A. Yes, ma'am. There's nothing promised.

22 Q. Now, in addition to the possibility of a  
23 reduced sentence in this case, you've gotten some  
24 other benefits as a Government witness; correct?

25 A. Such as?



1 Q. You've been given money by the federal  
2 government; correct?

3 A. \$50 a month.

4 Q. But you've been given over \$1,100 by the  
5 Government over the months; correct?

6 A. No. If you do the math, at \$50 a month,  
7 that does not nowhere come close to \$1,100.

8 Q. So if the Government has represented that  
9 you received over \$1,000, \$1,050, they would be  
10 incorrect?

11 A. I don't know. Like I say, I'm getting \$50  
12 a month. My math doesn't add up to that much. As I  
13 said earlier, I had to get into my tablet to get  
14 math homework help. But I'm pretty sure that don't  
15 equal up.

16 Q. Do you recall on September -- or I'm  
17 sorry, on December 12, 2017, receiving \$300 from  
18 Nancy Stemo?

19 A. From Nancy Stemo? On my inmate account it  
20 does not show anything from a Nancy Stemo.

21 Q. Do you know who Nancy Stemo is?

22 A. Yes, ma'am.

23 Q. And she's an FBI agent; correct?

24 A. Yes, ma'am.

25 Q. Do you recall signing a receipt of \$300

1 from Nancy Stemo?

2 A. I don't remember whose name was on it. I  
3 remember signing a receipt.

4 Q. And the payment was \$300?

5 A. Yes.

6 Q. And that was December 12, 2017; correct?

7 A. Give or take, somewhere around there.

8 Q. I can show it to you. Would that help  
9 refresh your memory?

10 A. Like I say, I don't know the exact date,  
11 but I remember signing a receipt.

12 Q. At that time, you had gotten more than  
13 \$50; correct?

14 A. I thought it was a Christmas present.

15 Q. I didn't ask you what you thought it was.  
16 But it was more than \$50; correct?

17 A. Yes, ma'am.

18 Q. And September 28 of 2017, you received  
19 \$100 from the Government, also from Nancy Stemo;  
20 correct?

21 A. I don't know who places it on it, but I  
22 remember signing a receipt.

23 Q. In August of 2017, you received another  
24 payment of \$300; correct?

25 A. In August?

1 Q. August of 2017?

2 A. Around there.

3 Q. In May of 2017 you received \$200 from  
4 Agent Acee?

5 A. I signed a receipt. I don't know if it  
6 was specifically from him.

7 Q. Well, sure. I mean, he's a representative  
8 of the federal government; correct?

9 A. Yes.

10 Q. So you received \$200 from the federal  
11 government?

12 A. Yes, ma'am.

13 Q. And on March 10th, 2017, you signed a  
14 receipt for \$200; correct?

15 A. March 10th. Around there, probably.

16 Q. So we have a receipt for \$200. Another  
17 receipt for \$200. So you agree with me that's \$400?

18 A. Yes, ma'am.

19 Q. And then another receipt for \$300? We're  
20 now up to \$700?

21 A. Yes, ma'am.

22 Q. And another receipt for \$100, so we're now  
23 up to \$800; correct?

24 A. Yes, ma'am.

25 Q. And then finally, last year, another

1 receipt for \$300; correct?

2 A. Yes, ma'am.

3 Q. That's \$1,100; correct?

4 A. Yes.

5 Q. That's over \$1,000.

6 A. Yes, ma'am.

7 Q. You were also permitted to visit with your  
8 wife at a plea hearing; correct?

9 A. Yes.

10 Q. And special arrangements were made for  
11 that?

12 A. I don't know if it was special  
13 arrangements. I'm sure they had to get the  
14 marshal's approval here. It was at this courthouse  
15 in the legal -- it wasn't even a contact visit. It  
16 was the legal visiting room.

17 Q. Have you ever been given contact visits  
18 with your wife?

19 A. When I was housed at the North facility.  
20 It wasn't due to the FBI. How the North facility  
21 was set up, all the cooperators they were letting  
22 get contact visits. I was able to get one visit.

23 Q. So that was when you were housed at PNM  
24 level North with other Government witnesses?

25 A. Yes.

1 Q. And the Government witnesses in the pod  
2 were given contact visits at that time?

3 A. Yes, ma'am.

4 Q. And were you also given extra phone calls?

5 A. Not that I know of.

6 Q. Were your phone calls limited when you  
7 were at PNM North in the cooperator pod?

8 A. No, I didn't know there was a reason to be  
9 limited.

10 Q. Well, the question was: Were they  
11 limited?

12 A. No.

13 MS. DUNCAN: Your Honor, if I could just  
14 have a moment.

15 THE COURT: You may.

16 BY MS. DUNCAN:

17 Q. So if the Government had represented as a  
18 result of your cooperation with them you receive  
19 more telephone calls than a typical inmate at a  
20 Level 6 facility, would you say that was wrong?

21 A. If they got involved? Possibly. Like I  
22 say, I wasn't a typical inmate. In the North I  
23 wasn't doing no part of a state program. I was a  
24 federal inmate there.

25 Q. A federal cooperating witness; correct?

1           A.    A federal cooperating. But the North does  
2 have a contract with the marshals to hold federal  
3 inmates.

4           Q.    Correct. So -- but you -- there were no  
5 limits on your phone calls?

6           A.    None of the federals have limits.

7           Q.    The people in your pod were all Government  
8 witnesses; correct?

9           A.    Yes.

10          Q.    You testified that you were with Anthony  
11 Baca at the Southern New Mexico Correctional  
12 Facility. You were with him -- and that was in  
13 2013; correct?

14          A.    Yes, I want to say so.

15          Q.    And the two of you were at the Southern  
16 New Mexico Correctional Facility for only a few  
17 months together in 2013; correct?

18          A.    Yes, ma'am.

19          Q.    You also testified you were with Mr. Baca  
20 at PNM North in 2015?

21          A.    In October, yes, ma'am.

22          Q.    And you were only together in PNM North  
23 for about a week?

24          A.    About a week.

25          Q.    And you've never -- before 2013 you had

1 never talked to Anthony Ray Baca; correct?

2 A. I had never met him personally before  
3 then.

4 Q. And those were the only two times you were  
5 personally in contact with Anthony Ray Baca?

6 A. Correct.

7 MS. DUNCAN: I have no further questions  
8 at this time.

9 THE COURT: Thank you, Ms. Duncan.

10 Anyone else have cross-examination?  
11 Mr. Jewkes?

12 CROSS-EXAMINATION

13 BY MR. JEWKES:

14 Q. Good afternoon, Mr. Martinez. I'd like to  
15 clarify two points as to testimony that you have  
16 previously given. Earlier today I believe you told  
17 us that when Ms. Armijo showed you some photographs,  
18 if I understood you correctly, the number 19 has  
19 significance?

20 A. Yes, sir.

21 Q. What is the significance?

22 A. The S is the 19th letter in the alphabet.  
23 And that's one of our signs, is the S. They call us  
24 the big S, for Sindicato de Nuevo Mexico.

25 Q. Okay. Ms. Armijo showed you 564.

1 MR. JEWKES: May I approach the witness?

2 THE COURT: You may.

3 BY MR. JEWKES:

4 Q. Do you recognize it?

5 A. Yes, sir.

6 Q. This is a tattoo of your back?

7 A. Yes.

8 Q. Now, we have what you call a charra;  
9 right?

10 A. Yes, sir.

11 Q. A Chihuahua cowgirl. And she has two  
12 bandoleers, and there are bullets in those  
13 bandoleers. If you count them -- and I would urge  
14 you to do that -- you're going to find out it's less  
15 than 19.

16 A. I was going on what Daniel said. I can  
17 never really truly see my back, sir. Daniel is the  
18 one that told me he put 19. So I've always assumed  
19 it to be true.

20 Q. I'm just curious. Would there be any  
21 significance as to why there wasn't exactly 19  
22 cartridges in there or --

23 A. Like I say, me and Daniel have always had  
24 disagreements, and he's never truly looked at me as  
25 a carnal.



1 Q. So you're saying that was intentional on  
2 the part of Mr. Sanchez?

3 A. More than likely, if that's the case, yes.

4 Q. You and Mr. Sanchez had problems before?

5 A. Yes, sir. We've had minor disagreements  
6 throughout the past.

7 Q. There was an instance -- correct me if I'm  
8 wrong -- let me get the date for you. The end of  
9 2013, both of you were at the Southern New Mexico  
10 Correctional Facility?

11 A. Correct, sir.

12 Q. And there was a handball game going on,  
13 was there not?

14 A. Yes, sir.

15 Q. And who was playing handball?

16 A. Me; your defendant, your client; and  
17 Molina, and one more person. I cannot remember who  
18 played teams.

19 Q. My client?

20 A. Yes, sir, your client, Daniel Sanchez.

21 Q. So tell us once again who was teamed up?

22 A. Me and Javier Molina. I want to say me  
23 and Javier, because me and him had been partners  
24 for --

25 Q. You and Javier Molina?

1 A. Yes. We were always partners.

2 Q. And who was on the other side?

3 A. Daniel -- and like I say, I don't remember  
4 who. I want to say Fred Martinez, but I'm not  
5 positive, so I'm not going to make that a final  
6 answer.

7 Q. But Daniel Sanchez and some other  
8 individual?

9 A. Yes, sir.

10 Q. And there was apparently a disagreement?

11 A. Yes, sir, me and Daniel were both the  
12 front man that day, yes. He'd hit the ball, he  
13 jumped over, and I slapped his ass.

14 Q. You slapped Mr. Sanchez?

15 A. Yes, which led to the argument.

16 Q. Because you didn't like him?

17 A. Yeah, in my way, yeah.

18 Q. Come on. You don't like Daniel Sanchez.

19 A. It's not that I don't like him. Me and  
20 him just have different views on life.

21 Q. It almost came to blows?

22 A. Yes, sir.

23 Q. So after that, to try to mend fences, Mr.  
24 Sanchez agreed to give you a tattoo?

25 A. Yes, sir.

1 Q. But you didn't take that necessarily as a  
2 peace offering, did you?

3 A. It's -- not necessarily. I allowed him to  
4 do it for a fact, showing him -- in prison, when you  
5 give someone your back, it's a deadly gesture. You  
6 can intentionally die showing someone your back. So  
7 in my way, he did it for his own agenda, and I did  
8 it -- yeah, I'll let you work on my back, to give  
9 you my back, to show you I'm not afraid of him.

10 Q. Mr. Martinez, let's talk about April 4,  
11 2014.

12 A. All right.

13 Q. Do you recall that administrative hearing?

14 A. Yes, sir.

15 Q. That was at Southern New Mexico; correct?

16 A. Yes, sir.

17 Q. And the hearing officer -- I believe his  
18 name was Ricardo Vallendia?

19 A. No, sir.

20 Q. It was not?

21 A. No, sir.

22 Q. Who was it?

23 A. Sallendia.

24 Q. S-A-L-L-E-N-D-I-A?

25 A. Your guess is as good as mine on how to

1 spell his last name, sir.

2 Q. But we're close, aren't we?

3 A. Sounds good.

4 Q. Not enough to start an argument over;  
5 right?

6 A. No.

7 Q. Okay. Mr. Sallendia, a hearing officer, I  
8 believe, for the State of New Mexico?

9 A. Yes, sir.

10 Q. And this concerned your conduct on March  
11 7? In other words --

12 A. Yes, sir.

13 Q. -- the investigation of Javier Molina. At  
14 that time, you were represented by another inmate,  
15 were you not?

16 A. Yes, sir.

17 Q. Tremaine Jernigan?

18 A. Yes, sir.

19 Q. Had he represented you before?

20 A. No, sir. I had barely met him after that  
21 incident took place. He was my neighbor in Seg.

22 Q. Was there any particular reason why you  
23 used Mr. Jernigan? Was he experienced in this sort  
24 of thing?

25 A. No, not necessarily. Between the both of

1 us, we figured we'd have a better shot. But I'd  
2 never known him before. He said he knew legal work.  
3 I've known legal work myself. But we figured two  
4 heads are better than one.

5 Q. Very well. And do you recall at one point  
6 in time the hearing officer asking you what happened  
7 and you saying you didn't know because you weren't  
8 there, referring to the incident involving  
9 Mr. Molina?

10 A. Yes, sir.

11 Q. Okay. So at that time, you were denying  
12 any knowledge of the assault on Javier Molina?

13 A. Yes, sir, due to the fact I knew there was  
14 pending legal charges still in the works.

15 Q. Okay. And at another time do you recall  
16 asking the hearing office if you'd be able to  
17 challenge the credibility of the CIs?

18 A. Yes, sir.

19 Q. What are CIs?

20 A. Confidential informants.

21 Q. You were concerned about confidential  
22 informants during that hearing?

23 A. Yes, sir.

24 Q. Why were you concerned?

25 A. Because we had already had -- we got

1 suspicious that Jerry Montoya was already  
2 cooperating with the STIU. And in order to be found  
3 guilty on confidential information, it has to be  
4 corroborated by two or more individuals.

5 Q. I'm sorry?

6 A. To be found guilty on confidential  
7 information, it has to be by at least two or more  
8 individuals.

9 Q. You're talking about in one of these  
10 disciplinary --

11 A. Yes, sir.

12 Q. And then later you became a confidential  
13 informant?

14 A. Yes, sir.

15 Q. Then do you recall another point in the  
16 hearing where the hearing officer asked if you admit  
17 or deny the allegations, and your response was: In  
18 essence you deny it?

19 A. Yes. That's what we do. I didn't get up  
20 there and say, "Yes, I did it." We're in prison.  
21 We always deny.

22 Q. You always deny in prison?

23 A. Yeah. Well, when you're facing a  
24 disciplinary hearing, you're trying to beat that  
25 report. No one wants to get stuck in Seg, so you're

1 trying to beat that report.

2 Q. I see.

3 A. And if you look further into my  
4 disciplinary packet, you'll see multiple statements  
5 where, in fact, Daniel Sanchez' brother had wrote me  
6 a statement and that was I had paid him to write  
7 that statement with dope. I had a statement on me,  
8 they were all trying to get me off. So it was a  
9 consensus thing, we'll get you off.

10 Q. But Mr. Martinez, no one is asking you  
11 about Ronald Sanchez.

12 A. No, I know. I was saying, if you want to  
13 bring up certain parts of that report in that  
14 hearing, you know, bring up the whole thing. So  
15 don't be giving the jury one little piece of it.

16 Q. Ronald Sanchez did not appear during that  
17 hearing.

18 A. No, but his statement was entered.

19 Q. But there is no record of it, is there?

20 A. My disciplinary hearing, yes, there is,  
21 because I used it along with my habeas corpus I  
22 filed on it.

23 Q. It's not in this transcript.

24 A. I don't know. I know it's been entered.

25 Q. Mr. Martinez, what --

1 MR. JEWKES: If I may have a moment, Your  
2 Honor?

3 THE COURT: You may.

4 BY MR. JEWKES:

5 Q. Moving forward to -- or actually, back to  
6 March 7, 2014, Daniel Sanchez never ordered you to  
7 kill anyone, did he?

8 A. He had Mario Rodriguez tell me.

9 Q. No, no, the question, sir: Did Daniel  
10 Sanchez order you to do anything?

11 A. He said I had to get it done or else, when  
12 I had that conversation with him in the vent.

13 Q. Mario Rodriguez was the one that was  
14 giving you instructions; do you agree with that?

15 A. Yes, Mario is one that told me. But like  
16 I said, in the vent, Daniel Sanchez says, "You  
17 better get it done, or else." So, therefore, he's  
18 ordering me. Dan was a senior member in that pod.  
19 He had to tell what would happen.

20 Q. But you were taking orders from Mario.

21 A. I'm just a soldier; I have to.

22 Q. But actually, both of you, you and Mario,  
23 were raised together, were you not?

24 A. Yes, we were. And that's why he used  
25 Mario to tell me.



1 Q. And when you come right down to it, you're  
2 tougher than Mario, aren't you?

3 A. We've had our squabbles in the past.

4 Q. But you're tougher, aren't you?

5 A. Maybe now.

6 Q. Maybe then?

7 A. Probably. But I have my loyalty for the  
8 family. I was loyal to the family. And if that's  
9 what had to be done, I had to go. Like I say, I  
10 think Daniel knew that if he told me, I'd have  
11 disputed it more. So he used Mario's and my  
12 friendship to his advantage, because he knew I'd go  
13 with Mario.

14 Q. Mr. Martinez, your story is  
15 well-rehearsed.

16 A. I don't know about rehearsed.

17 MS. ARMIJO: Objection, argumentative.

18 THE COURT: Well, sustained.

19 BY MR. JEWKES:

20 Q. Let's try question/answer, Mr. Martinez,  
21 one at a time, without freewheeling.

22 First of all, you've been convicted of  
23 attempted aggravated burglary?

24 A. Yes, sir, as part of my plea deal.

25 Q. Aggravated assault on a police officer

1 with a deadly weapon?

2 A. Two counts of it, yes, sir.

3 Q. Two counts. Then another aggravated  
4 assault with a deadly weapon?

5 A. Yes, sir.

6 Q. Possession of a firearm by a felon?

7 A. Yes, sir.

8 Q. False imprisonment?

9 A. Yes, sir.

10 Q. In 2003, in the Sixth Judicial Court of  
11 Hidalgo County, possession of a controlled  
12 substance?

13 A. Yes, sir.

14 Q. 2004, in the Second Judicial District  
15 Court of Bernalillo County, armed robbery with a  
16 deadly weapon?

17 A. If you want to call a BB gun a deadly  
18 weapon, yes, sir.

19 Q. A BB gun?

20 A. Yes, sir.

21 Q. What type of robbery was it?

22 A. We robbed a pizza man with a BB gun.

23 Q. A pizza delivery guy?

24 A. Yes.

25 Q. But, sir, you told us you were successful

1 in the drug business. Why would you have to hold up  
2 a pizza delivery kid, or guy?

3 A. We thought it was funny at the time. It  
4 was. I had money in my pocket.

5 Q. It was a joke?

6 A. Yeah. Me and my buddies, we thought it  
7 would be funny, and all that. I mean, we were  
8 young, we were dumb. I was young and dumb. And I  
9 didn't think of the consequences till after the  
10 fact.

11 Q. How old were you in 2004?

12 A. I just turned 21.

13 Q. How long have you been in the drug  
14 business?

15 A. Since was about 15, 16.

16 Q. How long did you -- were you in the Marine  
17 Corps, sir?

18 A. I went in going on a year and a half,  
19 about a year and a half.

20 Q. But I take it when you left the Marine  
21 Corps it was without an honorable discharge?

22 A. It wasn't honorable, but it wasn't  
23 dishonorable either. It was just a general  
24 discharge, other than honorable general discharge.

25 Q. A general?

1 A. Yes, sir.

2 Q. What kind of problems did you have in the  
3 Marine Corps?

4 A. I got an Article 15, Section B discharge  
5 for fighting with a superior officer.

6 Q. In other words, you struck an officer?

7 A. Yes, sir.

8 Q. Mr. Martinez, you were aware, were you  
9 not, that Mario Rodriguez wanted Javier Molina  
10 killed even before March of 2014?

11 A. No, I wasn't aware he wanted to kill him.

12 In fact, there was an incident, December,  
13 January, I had brought in some meth. I had meth. I  
14 got Mario high. And that's actually when I found  
15 out that there was paperwork on Javier. And at that  
16 point, if we would have let Mario have his way, he  
17 wanted me and Fred Martinez just to go beat him up  
18 and roll him out of the pod.

19 And I told Mario, "You're just high. You  
20 don't know what you're talking about. You're high.  
21 Schizo. Once you're sober, we'll talk about it."

22 So I don't know if he necessarily wanted  
23 him dead, no. At that point in time he told me and  
24 another SNM member, Efraim Martinez, just to go beat  
25 him up.

1 Q. Actually, he wanted you and Efraim  
2 Martinez to work him over; do you recall?

3 A. Beat him up, yes. Beat him up good,  
4 because he knows I could fight.

5 Q. Um-hum.

6 A. Not necessarily kill him. At no point did  
7 he ever say: "I want him dead." At no point did he  
8 ever say: "Kill him." He said: "Beat him up good,  
9 get him out of here."

10 Q. He didn't trust --

11 A. Javier.

12 Q. He didn't trust Javier?

13 A. At that point, I thought he was just high.  
14 Because when I brought it in, that was a  
15 stipulation. He told me, "Hey, carnal, can you  
16 bring me some meth?" I know Blue from the street, I  
17 know Mario from the streets. I know how he gets.

18 So I told him, "I'll bring you some, but  
19 you got to listen to me. Whenever you start wiggling  
20 out, you got to promise to come to me, and I'm going  
21 to remind you it's just the drugs talking."

22 So he was telling me this. I had that  
23 exact conversation with him. I said, "Hey, carnal,  
24 check it out. You're just wiggling out. You're high  
25 right now. Kick back." You know what I mean?

1           And so that's the understanding where I  
2 was, because I don't know if you're familiar with  
3 meth. You don't look like the type to ever use  
4 meth. So I don't think you'd actually know the  
5 effects that it truly has on you, and what it  
6 makes -- the psychological games it plays on your  
7 head. You know what I mean? And a person with  
8 Mario's past -- Mario, you know what I mean, he wigs  
9 out. I know him from the streets.

10           Q.    Would it be accurate to say that you don't  
11 really know when he's telling you the truth?

12           A.    No, I know when he's telling me the truth;  
13 just not when he's high. I know Mario very well.  
14 Like I say, I'm one of the few people that do know  
15 Mario, the real Mario, what he truly is as a person;  
16 not just what the paper says about him, all his  
17 charges. He's a good person.

18           Q.    What paper?

19           A.    When I refer to paper, what you're reading  
20 as charges. If you just read his jacket and his  
21 charges, he looks like a real horrible person, but  
22 he's really not. If you really took the time to get  
23 to know him, he is a good individual. He's kind,  
24 he's compassionate, he's loyal. One of his best  
25 qualities, he's a very loyal person. He was very

1 loyal to the SNM. So when Daniel told him, "Hey, go  
2 talk to Red," he didn't question it.

3 Q. You're relying on what Mario Rodriguez  
4 told you, are you not?

5 A. No, sir.

6 Q. Who came to you and told you that you  
7 needed to attack Javier Molina?

8 A. Mario, under Dan's orders. He said, "Dan  
9 wants you to go." But he knew, like I said, me and  
10 Dan have had disagreements throughout the past.

11 Q. Did you hear those orders?

12 A. Him straight out say: "You have to do  
13 it"? He says, "You need to do this or else," when  
14 we were in the vent. "You got to make sure this  
15 gets done, or else," meaning, in my  
16 interpretation -- your interpretation could be  
17 different, but my interpretation, living the life  
18 that we live, when you say "or else" in the prison  
19 culture, when there is a mission and you get tasked  
20 to do it, if you don't do it or you refuse it, you  
21 get a green light put on you. Therefore, when he  
22 says "or else," hey, if you don't do it you know  
23 there's going to be a green light on you, there will  
24 be a hit on you.

25 Q. Mr. Martinez, you're just about the

1 toughest guy in the pen.

2 A. Not necessarily.

3 Q. Why would you be petrified over something  
4 like that?

5 A. Do you want to die? Do you want to be  
6 stabbed, sir?

7 Q. That's not the question.

8 A. Well, do I? I'm asking you, do I want to  
9 die? No. It don't matter how tough I am. It don't  
10 matter how well I can fight. If they stab me and I  
11 die -- I don't want to die. So of course I'm going  
12 to go through with this mission.

13 Q. Why didn't you go to some other SNM people  
14 and ask them why this was going to happen, the  
15 justification for it?

16 A. Daniel was the senior ranking member in  
17 there. If it came from him, it was my understanding  
18 there was already consensus throughout the pods this  
19 is what had to be done. Dan was making sure it got  
20 carried out.

21 Q. Is it not true that's your supposition  
22 because you're relying upon what Mario Rodriguez  
23 told you?

24 A. He told me to get it done. And then, when  
25 I'm having this conversation with Mr. Sanchez in the



1 vent, he says, "Make sure" -- I asked him, "Why do I  
2 have to go?"

3 He says, "Because you need to put in jale,  
4 you need to earn your huesos. You got to make sure  
5 it gets done or else."

6 So, therefore, he didn't straight come and  
7 say: "Here, this is your mission. I'm telling you  
8 you have to do this." No, he's saying, "All right.  
9 Did Blue talk to you?"

10 "Yes, si mon, he talked to me. He told me  
11 what's up."

12 "All right. Make sure it gets done or  
13 else."

14 So therefore he's saying: "Make sure it  
15 happens, because if not, there is going to be a hit  
16 on you."

17 And I wouldn't doubt it, due to the fact  
18 me and Dan had our disagreements and arguments in  
19 the past. Him trying to find any way, knowing that  
20 me and Javier were friends, saying "I ain't going to  
21 do it" didn't justify his reason to put a green  
22 light on him, just because I know me and Dan didn't  
23 always see eye to eye.

24 Q. And the bottom line is: You never have  
25 liked Daniel Sanchez, have you?

1           A.     It's like I say, as a person, he's  
2 actually a good guy.

3           Q.     The question is: You don't like Daniel?

4           A.     No, I do. It's not that I don't like him.  
5 He's a good guy. Like I say, do I like the way he  
6 carries himself? Not really. Do I like the way he  
7 conducts himself in certain areas? Not really. As  
8 an individual, he's a good guy. I mean, I liked  
9 him. We got along.

10                   But the same amount of time we got along,  
11 we didn't get along. You know what I mean? It's an  
12 interesting culture in prison. You know what I  
13 mean? And the gang culture in prison, as we lived  
14 it, I didn't agree with the way he was running  
15 things. I didn't agree with his view on a lot of  
16 things. So therefore, he was the one that always  
17 carried himself: "You have to give me respect, you  
18 have to do this, you have to do that."

19                   And as a man, I respect him for being part  
20 of the family, being part of S. But I didn't know  
21 him as a man at that time. I couldn't just say,  
22 "Oh, I'm going to give you all the respect in the  
23 world," because I didn't know who he was. You know  
24 what I mean?

25                   So to sit here and say I don't like Daniel

1 Sanchez? No, that's a lie, because I do. He's an  
2 all-right guy. I don't like the way he does  
3 business, I don't like the way he runs the  
4 organization. I didn't like that.

5 Q. Mr. Martinez, with regard to the speech  
6 you just gave us, how long have you rehearsed that?

7 MS. ARMIJO: Objection.

8 A. It came right now.

9 THE COURT: Overruled.

10 A. I didn't rehearse that.

11 MR. JEWKES: Pass the witness.

12 THE COURT: Thank you, Mr. Jewkes.

13 Anyone else have cross-examination?

14 Mr. Villa?

15 MR. VILLA: Yes, Your Honor.

16 THE COURT: I tell you what: I didn't  
17 realize we were already at the break. Do you want  
18 to go ahead and have a break at this point, Mr.  
19 Villa?

20 MR. VILLA: Yes, Your Honor.

21 THE COURT: All right. We'll be in recess  
22 for about 15 minutes.

23 (The jury left the courtroom.)

24 THE COURT: All right. We'll be in recess  
25 for about 15 minutes.

1 (The Court stood in recess.)

2 THE COURT: All right. Mr. Martinez, I'll  
3 remind you that you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: Mr. Villa, if you wish to  
6 begin your cross-examination of Mr. Martinez, you  
7 may do so at this time.

8 MR. VILLA: Thank you, Your Honor.

9 THE COURT: Mr. Villa.

10 CROSS-EXAMINATION

11 BY MR. VILLA:

12 Q. Good afternoon, Mr. Martinez.

13 A. Good afternoon, Mr. Villa.

14 Q. So you killed Javier Molina?

15 A. No.

16 Q. You didn't kill him?

17 A. I participated. I technically did not  
18 kill him.

19 Q. You pled guilty to the murder of Javier  
20 Molina, didn't you?

21 A. I did.

22 Q. So you killed Javier Molina?

23 A. I pled guilty to aiding in murder and/or  
24 aiding and abetting in the murder.

25 Q. You pled guilty to murder?

1 A. Aiding and abetting a murder, yes.

2 Q. He was your best friend?

3 A. Yes.

4 Q. And you helped kill him?

5 A. Yes, sir.

6 Q. If it wasn't for you, he'd still be alive  
7 today?

8 A. Not necessarily.

9 Q. But he could be?

10 A. He could be.

11 Q. And you betrayed him, didn't you?

12 A. Unfortunately, I did.

13 Q. Because you wanted to help the SNM, as you  
14 testified here today?

15 A. Yes, sir.

16 Q. You wanted to earn your bones?

17 A. Yes, sir. I was a loyal member.

18 Q. You didn't have an SNM tattoo yet, did  
19 you?

20 A. No, sir.

21 Q. But I think you testified with Ms. Armijo  
22 that you didn't have your SNM tattoo at the time you  
23 got arrested in this case, did you?

24 A. No, I didn't.

25 Q. You did not have it?

1 A. No, sir.

2 Q. You got it on your arms, because we saw a  
3 picture that didn't have any tattoos on your arms;  
4 right?

5 A. Before that, I was locked up in solitary  
6 confinement. There is no way -- I'm not an artist,  
7 so I couldn't tattoo myself.

8 Q. I think it was your testimony, was it not,  
9 that you couldn't get an SNM tattoo because you  
10 weren't allowed?

11 A. Yes, sir.

12 Q. And then you did get one after the murder  
13 of Javier Molina?

14 A. I put in work, yes, sir.

15 Q. And that work was to help kill Javier  
16 Molina?

17 A. Yes, sir.

18 Q. Your best friend?

19 A. Yes, sir.

20 Q. Your buddy?

21 A. Yes, sir.

22 Q. So you got a tattoo out of it?

23 A. Being loyal to the family, yes.

24 Q. An SNM tattoo that you're still wearing  
25 today?

1 A. Unfortunately, yes.

2 Q. And after you killed your friend Javier  
3 Molina, you tried to cover it up, didn't you?

4 A. Yes, sir.

5 Q. You tried to lie to the Court right here  
6 in Las Cruces, the district court, didn't you?

7 A. No, sir.

8 Q. So you're telling me that --

9 A. What do you mean, lying to the Court?  
10 I've never been in the courtroom for any other case.  
11 I was in with his lawyers, but I was never in any  
12 official proceedings.

13 Q. May I have the Elmo, please?

14 I'm going to show you Exhibit FP.

15 The Elmo is fine.

16 You signed this Exhibit FP, Mr. Martinez,  
17 under oath knowing that it was going to get used in  
18 Jerry Montoya's case; right?

19 A. Yes, in Jerry Montoya's case, when it  
20 actually did go forth in the district court, yes.

21 Q. And I think you told Ms. Duncan that the  
22 stuff in this affidavit wasn't true?

23 A. Yes, sir.

24 Q. You were trying to cover up the murder of  
25 your best friend?

1 A. That was the plan, yes.

2 Q. That was part of your plan, wasn't it?

3 A. It was an SNM plan. It wasn't my plan.

4 It was an SNM plan.

5 Q. You signed this affidavit, didn't you?

6 A. Yes, sir. That's my part in the plan.

7 Q. You swore under oath that this was true?

8 A. Yes.

9 Q. By the way, has anybody prosecuted you for  
10 lying under oath?

11 A. No, sir.

12 Q. You haven't been charged with perjury?

13 A. No, sir.

14 Q. The Government hasn't charged you?

15 A. Not yet. I'm sure they can if they want  
16 to.

17 Q. Mr. Martinez, why don't you just answer  
18 the questions that I ask, instead of volunteering,  
19 okay? You'll get another chance with Ms. Armijo.

20 What you did to Javier Molina was a  
21 cowardly act, wasn't it?

22 MS. ARMIJO: Objection, argumentative.

23 THE COURT: Sustained.

24 BY MR. VILLA:

25 Q. Did you not tell Sergeant Larcher of the



1 New Mexico State Police and Agent Roundy of the FBI  
2 that what happened, the way Javier Molina was  
3 killed, was a cowardly way?

4 A. Yes.

5 Q. You said that?

6 A. Well, I never said it was a cowardly way.  
7 I know I said --

8 Q. You didn't say it was a cowardly way?

9 A. I said that was my friend. I shouldn't  
10 have let it happen. I should have stood up for him.

11 Q. As a matter of fact, you said it was your  
12 best friend?

13 A. Yes. Me and Mr. Molina were very close.

14 Q. And you said to those police officers that  
15 the way he was killed was a cowardly way?

16 A. I don't recall saying "cowardly," but I  
17 know I did have a conversation saying that he  
18 shouldn't have died in the first place.

19 Q. If you looked at that interview, that  
20 might help refresh your recollection as to what you  
21 said?

22 A. Possibly.

23 MR. VILLA: May I approach, Your Honor?

24 THE COURT: You may.  
25

1 BY MR. VILLA:

2 Q. Now, Mr. Martinez, you remember the  
3 interview that you talked about with Ms. Duncan on  
4 March 10th?

5 A. Yes, sir.

6 Q. And that was with Sergeant Larcher of the  
7 State Police?

8 A. Yes, sir.

9 Q. As well as an agent -- this says Randy,  
10 but it's actually Agent Roundy; right?

11 A. I guess, sir.

12 Q. This document I'm showing you says March  
13 10th, 2014, interview with Timothy Martinez; right?

14 A. Yes, sir.

15 Q. And I'm going to show you page 14. And I  
16 want you to read to yourself, starting on line 12,  
17 the highlighted portion to line 17. Just read it to  
18 yourself.

19 Does that refresh your recollection about  
20 what you said?

21 A. Yes, sir.

22 Q. And you said that the killing of your best  
23 friend was done in a cowardly way?

24 A. It was. And I was speaking of myself, not  
25 the way it was. I'm speaking of myself as being a

1 coward.

2 Q. So you were talking about yourself?

3 A. Yes. Because I participated in it, and it  
4 clearly says -- if you read the rest -- after it  
5 says "cowardly," it says, "If I would have helped,  
6 he might still be alive."

7 Q. So when I asked you, if you would have  
8 helped, he might still be alive, that was true?

9 A. Yeah. He might. You said he would be  
10 alive. You made it a fact that he would still be  
11 alive.

12 Q. So you could have -- when Mario Rodriguez  
13 came to you and said he wanted you to get high, and  
14 ultimately explained to you the paperwork came for  
15 Javier Molina, you could have tried to stop it;  
16 right?

17 A. I could -- I'm a low guy on the pole. If  
18 Dan says it has to be done, it has to be done.

19 Q. Well, let's talk about that. I didn't ask  
20 you what Dan Sanchez did or didn't do. I want to  
21 talk -- the answer to my question is yes, you could  
22 have tried to stop; right?

23 A. If I would have tried to stop it, I would  
24 put a green light on me and a hit on me.

25 Q. Well, you're here today testifying --

1 A. Yes.

2 Q. -- didn't you say if you testify -- Mr.  
3 Martinez, when I'm done asking the question, then  
4 you can answer. Okay?

5 A. Yes, sir.

6 THE COURT: And if Mr. Villa interrupts  
7 you, just stop immediately. Okay?

8 THE WITNESS: All right.

9 BY MR. VILLA:

10 Q. Mr. Martinez, I think it was your  
11 testimony that by giving testimony here today, you  
12 put a green light on yourself?

13 A. Yes, sir, I did.

14 Q. Okay. So you're afraid -- or you claim  
15 that your testimony today is going to put your life  
16 in danger?

17 A. Yes, sir.

18 Q. And back when Mario Rodriguez came to you  
19 and told you this plan, you just said to the jury,  
20 if you tried to stop, you might get a green light on  
21 it; right?

22 A. Yes, sir.

23 Q. And back, then, in 2014, you made the  
24 decision to go along with it and kill your best  
25 friend?

1 A. I was a loyal member of the SNM, so yes.

2 Q. And now you've made a decision --

3 A. To walk away from the SNM.

4 Q. -- to testify for the Government; right?

5 A. Yes, sir.

6 Q. Because you're hoping to get a lesser  
7 sentence?

8 A. No, sir.

9 Q. You're not hoping for that at all?

10 A. No, I'm hoping to right my wrong the best  
11 I can. And if that involves bringing the people  
12 down that were involved in it, then that's my part.  
13 I know that will never give Ms. Molina her son back,  
14 and I've never been promised anything. I'm doing  
15 this to clear my conscience, like I said before.  
16 I'm trying to walk with the Lord and trying to get  
17 close back to the Lord. And in that, I've got to  
18 atone for my sins. And this is the way to atone for  
19 them.

20 Q. That's what you want the jury to think;  
21 right?

22 A. That's the truth.

23 Q. That's what you're telling the jury;  
24 right? That's what you just said?

25 A. Yes.

1 Q. Okay. And you understand that in your  
2 plea agreement, in which you pled guilty to  
3 murdering your best friend, that you're facing a  
4 mandatory life sentence; right?

5 A. Yes, sir.

6 Q. But you know that the Government, if they  
7 file that motion for 5K, you can get out of that  
8 life sentence? That's a possibility; right?

9 A. Possibility.

10 Q. And it's your testimony to this jury that  
11 you're just doing it to atone for your sins, not  
12 because you're hoping for a shorter sentence?

13 A. No.

14 Q. All right. So that's what you're saying  
15 to the jury?

16 A. Yes. I mean, if I do get a shorter  
17 sentence, so be it. But my main thing --

18 Q. I understand what you're saying. So I  
19 want to understand that -- you're on in-house  
20 parole; right?

21 A. Yes, sir.

22 Q. And you get out from your state sentence  
23 April of this year?

24 A. Yes, sir.

25 Q. So a couple of months from now; right?

1 And after your testimony, depending on what the  
2 Government does, you have an opportunity to get out  
3 of a life sentence earlier, too; right?

4 A. I have a possibility of getting maybe a  
5 parole date.

6 Q. And when you entered your plea that Ms.  
7 Armijo showed you on direct -- you entered that plea  
8 January 26, 2017; right?

9 A. Yes, sir.

10 Q. And just before that, on December 29 of  
11 2016, you came in and provided information to the  
12 Government; right?

13 A. Yes, sir. And that's when I officially  
14 decided to cooperate.

15 Q. And it's your testimony that you aren't  
16 hoping for a sentence of, say, three to five years?

17 A. I didn't even know that would be possible.

18 MR. VILLA: Your Honor, I'd like to play  
19 what's been marked as Z15 for the jury.

20 MS. ARMIJO: Your Honor, we don't know  
21 what this is, or its purpose, if he has --

22 THE COURT: What is this?

23 MR. VILLA: Your Honor, it's a phone call.  
24 It's a jail phone call.

25 THE COURT: All right. Do you want

1 discuss it up here at the bench, Ms. Armijo?

2 MS. ARMIJO: Yes.

3 (The following proceedings were held at  
4 the bench.)

5 THE COURT: What is the statement you are  
6 trying to impeach?

7 MR. VILLA: His expectations in the phone  
8 call, in which there is a discussion about him  
9 getting three to five years. And then there is  
10 another phone call, Z13, in which there is a  
11 discussion about him getting a sentence of time  
12 served or a few years.

13 THE COURT: The specific sentence he hopes  
14 to get?

15 MR. VILLA: Yes.

16 MS. ARMIJO: I think they can ask him if  
17 he made the phone calls. In lieu of playing them  
18 outright, they should ask him. And if he denies it,  
19 they can play --

20 THE COURT: I think he's denied it several  
21 times, so I'll let Mr. Villa play the telephone  
22 call. Overruled.

23 (The following proceedings were held in  
24 open court.)

25 THE COURT: All right. Mr. Villa.



1 BY MR. VILLA:

2 Q. Mr. Martinez, we're going to put this up  
3 here in just a minute, but you had some  
4 conversations, did you not, with family, friends  
5 about your cooperation in this case?

6 A. What do you mean? That I am cooperating?

7 Q. You had phone calls.

8 A. Letting them know that I am cooperating?

9 Q. Well, let me just re-ask the question.  
10 You had phone calls from the jail, or wherever you  
11 were being detained certain periods of time to  
12 discuss your cooperation; true?

13 A. Yes.

14 Q. And those phone calls you know are  
15 recorded?

16 A. Yes.

17 Q. I'm going to play you a call from January  
18 16, 2017, about two weeks after your first statement  
19 to the Government; right?

20 A. Yes.

21 (Tape played.)

22 Q. Mr. Martinez, I paused that briefly. Did  
23 it say it was a collect call from Tim -- excuse me,  
24 a call from Tim?

25 A. Yeah.

1 Q. You recognize your voice?

2 A. Yes.

3 Q. We'll continue it.

4 (Tape played.)

5 Q. Do you recognize who you're talking to?

6 A. I believe that's my wife.

7 Q. That's your wife?

8 A. Yes, sir.

9 Q. All right.

10 (Tape played.)

11 Q. So Mr. Martinez, did you hear your wife  
12 talk to you about the number three to five years?

13 A. I did not hear her say three to five. I  
14 heard her saying that I had a very minor role, and  
15 they did everything. They had video saying --  
16 showing the ones that did everything, and me having  
17 a minor role. I didn't hear her throw numbers out.  
18 I'm sorry, sir, I really didn't.

19 Q. If we play it again, would you listen?

20 A. If you please.

21 (Tape played.)

22 Q. Did you hear her say, "Why the hell would  
23 they go any lower than three to five?"

24 A. That's her making assumptions. My wife,  
25 she says, why can't they go lower than three to

1 five. She wants me out today, tomorrow. My wife  
2 wants me out as soon as possible, so --

3 Q. So your wife would like a sentence of,  
4 say, time served?

5 A. Yeah.

6 Q. So after that phone call, January 16,  
7 2017, you enter your plea January 26, 2017; right?

8 A. Yes, sir.

9 Q. And then you have another phone call with  
10 your wife on February 6, 2017, which Your Honor, is  
11 marked for identification as Z13, and I'd like the  
12 play that for the jury.

13 (Tape played.)

14 Q. So that was another call from you; right?

15 A. Yes, sir.

16 Q. Okay. We'll continue.

17 (Tape played.)

18 Q. Did you hear that, Mr. Martinez?

19 A. Yes.

20 Q. So you're talking to your wife about a  
21 sentence of time served?

22 A. I also said it would be a true, true  
23 blessing if I was able to get that. At no point do  
24 you say this is what I'm getting.

25 Q. I heard your answer. The next thing you

1 said was, "or if I have to do a couple of years,"  
2 right?

3 A. Or if I said --

4 Q. Mr. Martinez, is that what you said?

5 A. A couple years, yes. I'm throwing out  
6 hypothetical numbers.

7 Q. I didn't ask you to explain. My question  
8 is a yes-or-no question.

9 A. Yes.

10 Q. Did you tell your wife "or a couple of  
11 years"?

12 A. Yes, but I --

13 Q. And so the answer is yes; right?

14 And Mr. Martinez, is a couple generally  
15 thought of as two?

16 A. Yes.

17 Q. Now, that wasn't the only thing that you  
18 were hoping for with your helping the Government, is  
19 it?

20 A. No.

21 Q. You also were hoping to get relocated and  
22 have money from the Government to help you relocate?

23 A. Not necessarily money, but relocating. I  
24 don't want to stay in New Mexico because my life  
25 will be in danger.

1 Q. You didn't think you were going to get  
2 money from the Government for relocating?

3 A. I don't know how any of that works.

4 Q. Okay. So let me play you the last call  
5 marked for identification as Z14, and this was also  
6 a call on February 6, 2017.

7 (Tape played.)

8 Q. Mr. Martinez, this is you and your wife  
9 talking again?

10 A. Yes.

11 Q. You just heard you tell your wife, "Call  
12 Bryan. He'll tell you what has to happen"?

13 A. To explain what the witness protection  
14 program is, yes.

15 Q. And you're talking about Bryan Acee?

16 A. Yes, sir.

17 Q. Let's keep playing.

18 (Tape played.)

19 Q. Mr. Martinez, did you hear where you told  
20 your wife: "If I have to do prison, they will help  
21 me get training in the electrical field"?

22 A. Yes, sir.

23 Q. "And then help me get a job," if you have  
24 to do prison and get out? Yes?

25 A. Yes, sir.

1 Q. And then help your wife get a job in her  
2 profession?

3 A. This is all stuff that I found out on my  
4 own through my own research.

5 Q. I didn't ask you that question. So why  
6 don't you just answer the questions I ask. Okay?

7 A. Yes, sir.

8 Q. Let's keep playing.

9 (Tape played.)

10 Q. Did you hear yourself say, "They'll help  
11 relocate us financially wise"?

12 A. Yes, sir.

13 (Tape played.)

14 Q. Do you hear you tell your wife, "They gave  
15 us a good chunk of change"?

16 A. Yes, sir.

17 Q. And when you said "a good chunk of  
18 change," you're talking about money?

19 A. Yes, sir.

20 Q. So Mr. Martinez, you didn't make a choice  
21 to save your best friend, but you did make the  
22 choice to try to save yourself from a lifetime in  
23 prison, didn't you?

24 A. Not necessarily.

25 Q. Well, we can talk about that a little bit

1 more. But you'd like, would you not, for this jury  
2 to find Mr. Perez guilty so that you can get a  
3 reduced sentence?

4 A. I --

5 Q. You don't want that?

6 A. -- if Rudy gets found guilty or not  
7 guilty, you know what I mean?

8 Q. The question, Mr. Martinez, is: Would you  
9 like that, yes or no?

10 A. If the jury finds it appropriate to find  
11 him guilty, then yes, he's guilty.

12 Q. You told the jury something about what Mr.  
13 Perez said to you in Torrance County Detention  
14 Center; correct?

15 A. Yes.

16 Q. I think it was your direct testimony that  
17 Mr. Perez said that he had to do his part for la  
18 familia, right?

19 A. Yes, sir.

20 Q. Because everyone had to play their part?

21 A. Yes, sir.

22 Q. But what you told the jury that meant was  
23 him providing pieces of his walker; right?

24 A. Yes, sir.

25 Q. But this same conversation that you said

1 you had with Mr. Perez, you had with the Government;  
2 right?

3 A. Yes, I told them what he said, yes.

4 Q. In fact, the first time you ever told the  
5 Government that was January 23, 2018; right?

6 A. Yes, sir.

7 Q. And you got out of Torrance County in the  
8 year 2016?

9 A. The end of '16, yes, 29th.

10 Q. So before December 29, 2016?

11 A. No, that's the day I left.

12 Q. That's the day you left?

13 A. Yes, sir.

14 Q. And that's the day you talked to the  
15 Government for the first time?

16 A. Yes.

17 Q. Right after Torrance County?

18 A. Yes, sir.

19 Q. And you didn't tell the Government about  
20 Mr. Perez' statement then, did you?

21 A. No, sir.

22 Q. And then you talked to the Government  
23 again after you entered your plea agreement; true?

24 A. Yes, sir.

25 Q. And you didn't tell them about Mr. Perez'



1 statement then, did you?

2 A. No, sir.

3 Q. It wasn't until a week before this trial  
4 that you came up with that statement?

5 A. I did not come up with it. It's something  
6 he personally told me.

7 Q. And what you told the Government on  
8 January 23, 2018, is a little different than what  
9 you told the jury, isn't it?

10 A. That he had to put in work; that was his  
11 part for putting in work, giving up the metal.

12 Q. Was what you told the jury today different  
13 than what you told the Government on January 23,  
14 2018? Yes or no?

15 A. How is it wrote in my 302?

16 Q. I'm asking you.

17 A. I don't know. How is the 302 written up?

18 Q. If I showed it to you, would that help?

19 A. Yes, sir.

20 MR. VILLA: May I approach?

21 THE COURT: You may.

22 BY MR. VILLA:

23 Q. Mr. Martinez, I'm showing you the FBI 302  
24 from January 23, 2018, involving your statement;  
25 right?

1 A. Yes.

2 Q. And that was written by FBI Agent Thomas  
3 Neale?

4 A. Yes.

5 Q. Okay. So I'm going to flip -- and by the  
6 way, Thomas Neale was present there along with  
7 United States Attorney Maria Armijo; right?

8 A. Yes.

9 Q. So I'm going to flip you to page 3 and let  
10 you read this paragraph. Just read it to yourself,  
11 okay?

12 Did you get it?

13 A. Yes, sir.

14 Q. So what you told the Government on January  
15 23, 2018, was that when Mr. Perez supposedly told  
16 you that he had to do his part for la familia and  
17 everyone has to play a part, he said, even if it is  
18 just to keep your mouth shut?

19 A. Yes, sir.

20 Q. That's what Mr. Perez told you?

21 A. No, sir.

22 Q. So what's written in here is incorrect?

23 A. No, you did not read the whole thing. I  
24 said he had to give the metal; that was his part to  
25 play for la familia.

1 Q. Mr. Martinez, answer my question. Let me  
2 ask you a question. Do you want me to show you this  
3 302 again?

4 A. Yes, please, because --

5 MR. VILLA: Your Honor, can we do it on  
6 the Elmo?

7 THE COURT: No, you can show it to him  
8 again.

9 MR. VILLA: I just meant between me and  
10 Mr. Martinez.

11 BY MR. VILLA:

12 Q. So Mr. Martinez, I'm talking about the  
13 statement, the la familia statement.

14 A. Yes.

15 Q. I'll get to the other statements in just a  
16 minute.

17 A. All right. In that case, yes.

18 Q. Okay. So when he talked about playing his  
19 part for la familia, that was in the context of  
20 keeping your mouth shut?

21 A. No. I took it in the context of --

22 Q. Well, you answered my question. You said  
23 no.

24 A. All right.

25 Q. Fair enough. But it does say in here,

1 right after you tell the Government that he had to  
2 do his part for la familia, because everyone has to  
3 play a part, even if it is just to keep your mouth  
4 shut. It does say that in here; correct?

5 A. It does say that.

6 Q. And what Mr. Perez told you is that he was  
7 asked about metal for his walker; right?

8 A. Yes, sir.

9 Q. In fact, what happened was that Mario  
10 Rodriguez took the piece of metal from his walker;  
11 isn't that true?

12 A. I don't know. I wasn't there.

13 Q. You weren't present for that?

14 A. No, I just recall the conversation me and  
15 Mr. Perez had.

16 Q. And that conversation that you and Mr.  
17 Perez had was in 2016; correct?

18 A. Yes, sir.

19 Q. So -- and I guess that would have been in  
20 the fall of 2016; right?

21 A. Yeah, a little over two years after the  
22 incident.

23 Q. Two years later?

24 A. Yes, sir.

25 Q. If Mr. Perez had said to you: "I was

1 really scared and didn't want to get hurt, so I went  
2 along with it," that would be weak on his part,  
3 wouldn't it?

4 A. Yes, sir.

5 Q. And when you're in the prison setting, in  
6 prison culture, you don't want to look weak, do you?

7 A. Absolutely not.

8 Q. Ms. Duncan asked you about your statements  
9 to STIU Officer Holguin on Martinez 8, 2017. Do you  
10 remember that?

11 A. Yes, sir.

12 Q. And she showed you the statement for that?

13 A. Yes, sir.

14 Q. So the day after you helped kill your best  
15 friend, you talked to STIU Agent Holguin; right?

16 A. Yes.

17 Q. And you gave him information about the  
18 case, didn't you?

19 A. I said we were in there getting high, yes.

20 Q. I mean, you gave him more information than  
21 that, didn't you? You suggested to him that it  
22 wasn't just a personal beef; that it was a hit?

23 A. Yes, sir.

24 Q. You suggested that to Agent Holguin?

25 A. Yes.

1 Q. And he asked you about where the metal had  
2 come from, didn't he?

3 A. Yes, sir.

4 Q. Because you worked in the wheelchair  
5 program; right?

6 A. Yes.

7 Q. And he suspected that this piece of metal  
8 may have come from that wheelchair program?

9 A. Yes, sir.

10 Q. So he was asking you questions about that?

11 A. Yes, sir.

12 Q. And even though you gave him information  
13 that he didn't know about this being a hit, you  
14 didn't say anything about the piece coming from Mr.  
15 Perez' walker, did you?

16 A. At that time, I did not, no, sir.

17 Q. Now, I want to ask you, getting back to  
18 that statement you made on March 10th, 2014, you  
19 agreed with me that Sergeant Larcher of the State  
20 Police was there; right?

21 A. Yes, sir.

22 Q. And FBI Agent Roundy was there; right?

23 A. Yes, sir.

24 Q. And I think you told Ms. Duncan that what  
25 you told Agent Roundy wasn't true; right?

1 A. It wasn't true, by admitting the fact that  
2 I participated, yes.

3 Q. So some of the things you said to Agent  
4 Roundy were not true?

5 A. Some of the things I said were not true.

6 Q. And Agent Roundy is a federal FBI agent;  
7 correct?

8 A. Yes, sir.

9 Q. You're aware that it's a crime to lie to a  
10 federal agent?

11 A. Yes, sir.

12 Q. Has the Government charged you with lying  
13 to a federal agent?

14 A. As of this time, no.

15 Q. Have they ever given you indication, since  
16 you decided to help them, that they were going to do  
17 that?

18 A. No.

19 Q. And I think you testified that there was a  
20 period of time when you were helping Mr. Perez --  
21 this is before all this happens with Mr. Molina --  
22 because you knew he was sick; right?

23 A. Yes, sir.

24 Q. And he sometimes went out to rec, but he  
25 didn't go out very often?

1 A. Yes, sir.

2 Q. Mostly stayed in his room?

3 A. Yes, sir.

4 Q. And when he was getting around, he needed  
5 to use a walker to get around?

6 A. Yes, sir.

7 Q. And you were actually there in Southern,  
8 weren't you, in about 2012 when Mr. Perez was there  
9 too?

10 A. Yes, he ended up in LTCU.

11 Q. So that is the long-term care unit; right?

12 A. Yes, sir.

13 Q. That's a prison hospital in Los Lunas?

14 A. Yes, sir.

15 Q. And in 2012 he got very, very sick while  
16 you were up there with him in Southern; right?

17 A. Yes, sir. I was living in the house right  
18 above him.

19 Q. And in fact, you told the corrections  
20 officers that Mr. Perez was really sick and he  
21 needed help?

22 A. Yes, sir.

23 Q. And because of that, Mr. Perez then went  
24 to the long-term care unit?

25 A. Yes, sir.



1 Q. And are you aware that from there he went  
2 to University of New Mexico Hospital for a long  
3 period of time?

4 A. I wasn't aware at the time. We spoke  
5 about it after the fact. But at the time I had no  
6 idea. I just knew they took him and I figured he  
7 was in the LTCU, because that's the hospital for the  
8 prison.

9 Q. He got back to Southern after that -- from  
10 2012 when you made the report that he needed help,  
11 he didn't get back to Southern until December of --  
12 excuse me -- October of 2013; is that right?

13 A. I don't recall the exact time when he got  
14 back.

15 Q. Let me make sure I'm telling you this  
16 right. Let's take a look at Mr. Perez' location  
17 history. It's already been admitted into evidence.  
18 I believe this is V24, Mr. Martinez. We'll show it  
19 to you on your screen.

20 And so if we can highlight, it's the fall  
21 of 2013 right here. We'll get that a little bit  
22 closer for you. So Mr. Martinez, this says that on  
23 September 10th, 2013, through October 3, 2013, Mr.  
24 Perez was in LTC. Do you see that there?

25 A. Yes, sir.

1 Q. And do you have any reason to believe  
2 that's not LTCU, the long-term care unit?

3 A. I have no reason to believe it's not.

4 Q. And then on October 3, 2013, this document  
5 indicates he goes to Southern New Mexico  
6 Correctional Facility; is that right?

7 A. Yes.

8 Q. And does that sound about the time that  
9 Mr. Perez returned to Southern?

10 A. Like I say, I can't recall the exact  
11 dates. But given the timeframe, that sounds about  
12 right. I know he was gone for about five, six  
13 months.

14 Q. But you were still there?

15 A. Yes, sir.

16 Q. And when he got back, he was still pretty  
17 sick, wasn't he?

18 A. He was in recovery. I mean, he could  
19 move. He actually got in a couple fistfights after  
20 the fact he got back. So he could move.

21 Q. My question to you, Mr. Martinez, is: He  
22 was still sick?

23 A. Yeah. Well --

24 Q. He spent most of the time in his room?

25 A. Yes.

1 Q. And this is approximately, I guess, five  
2 months before the incident with Mr. Molina?

3 A. Yes, sir.

4 Q. After the incident with Mr. Molina, I  
5 think you testified at some point you got moved to  
6 PNM, to the North facility; correct?

7 A. After -- what do you mean?

8 Q. At some point in time after Mr. Molina was  
9 killed --

10 A. Oh, yes, sir.

11 Q. -- you moved to the PNM North facility?

12 A. Yes, sir.

13 MR. VILLA: Your Honor, I marked for  
14 identification Defendants' Exhibit V19. It is Mr.  
15 Martinez' location history. I move to admit it.

16 THE COURT: Any objection?

17 MS. ARMIJO: No, Your Honor.

18 THE COURT: Any objection from the  
19 defendants?

20 MS. DUNCAN: No, Your Honor.

21 MS. BHALLA: No, Your Honor.

22 THE COURT: Mr. Jewkes, are you okay with  
23 it?

24 MR. JEWKES: Oh, yes. No objection.

25 THE COURT: All right. Defendants'

1 Exhibit V19 will be admitted into evidence.

2 (Defendants' Exhibit V19 admitted.)

3 BY MR. VILLA:

4 Q. Mr. Martinez, I'm showing you V19. It's  
5 your offender physical location history. Do you see  
6 that there at the top?

7 A. Yes.

8 Q. Have you ever seen this document before?

9 A. No, sir.

10 Q. Well, I'm going to -- actually, what I'd  
11 like to do is pull up the October 2015 timeframe to  
12 show you that. Okay. So it indicates here June 25,  
13 2015, that you go to PNM; correct?

14 A. Correct, yes, sir.

15 Q. And that's about the time you went to PNM;  
16 right?

17 A. Yeah. I thought it was a little later,  
18 but yeah.

19 Q. It indicates then from that period of  
20 time, through December when you go to the marshal's  
21 custody, that at least until November 4, you're in  
22 housing unit N3; is that right?

23 A. Till November 4?

24 Q. I apologize. Till October 28.

25 A. October 28, 2015, would be -- yes, that's

1 when I got transferred to Cruces, during Montoya's  
2 state case.

3 Q. So this period of time that I've circled,  
4 June 25, 2015, to October 28, 2015, you're at PNM in  
5 housing unit N3, except for one day when you go to  
6 Santa Fe District Court?

7 A. I'm in 3-B and 3-A both, yes.

8 Q. But the housing unit is --

9 A. North. There's two different housing  
10 units. There is housing unit North 3-B, and housing  
11 unit North 3-A.

12 Q. So those are two separate buildings?

13 A. Yes.

14 Q. And while you were in housing unit North  
15 3-B, you were housed with other individuals in this  
16 case; correct?

17 A. Yes, sir.

18 Q. And I think that included -- well, let me  
19 ask you, you tell me who was there at that period of  
20 time when you're in North 3-B.

21 A. Mr. Perez was my neighbor, and I know  
22 Mario Rodriguez was in there. Eric Duran, Roy  
23 Martinez. Who else was upstairs? I want to say  
24 David Calbert. Not too sure who is upstairs. It's  
25 all SNM members, so --

1 Q. And many of those individuals are now  
2 cooperating with the Government just like you,  
3 aren't they?

4 A. There's a few, yes.

5 Q. Eric Duran?

6 A. Yes, sir.

7 Q. Mario Rodriguez?

8 A. Yes, sir.

9 Q. David Calbert?

10 A. Yes, sir.

11 Q. And during this period of time, you guys  
12 are in Level 6 segregation, so basically solitary  
13 confinement?

14 A. Yes, sir, it's maximum security.

15 Q. So you can talk to your neighbors through  
16 the vents, but you don't really get to congregate in  
17 the common area of the pod?

18 A. You never have physical interaction with  
19 anyone. Like I said, we can talk through -- there's  
20 heater vents and air ducts that you can talk  
21 through, but you'll never have actual physical  
22 contact with anyone.

23 Q. And you get out for rec one hour a day?

24 A. One hour a day in the separate little cage  
25 out behind the unit.

1 Q. In some of those instances, you have some  
2 of your neighbors in cages next to you, you can talk  
3 to them?

4 A. At certain times, yes. It all just  
5 depends who you end up next to, how they run the  
6 yard. The officers will just start filling up the  
7 cages by numbers. I think there's 12 cages. So  
8 whoever they strip out first goes, and they just  
9 fill them in in random order.

10 Q. Some days you get to talk to other people  
11 in your pod, and some days you don't?

12 A. Some days you'll talk to guys in the pod  
13 next to you, because everyone doesn't go out in your  
14 pod. Twelve people a pod. So unless the whole pod  
15 goes out -- say there's four people from our pod,  
16 three from the next, and so on, you could be next.  
17 There are four pods in each unit.

18 Q. Okay. So during the time period from June  
19 2015 to October 2015, when you're in PNM, in the  
20 North facility, you agree with me that there's a lot  
21 of talk about the Molina homicide; correct?

22 A. Yes.

23 Q. Not every day. But sometimes you get to  
24 talk about it; right?

25 A. And it wasn't a main topic. Every now and

1 then it would come up. But if it wasn't -- like I  
2 say, rarely, rarely did it come up. It wasn't a big  
3 topic of --

4 Q. Were you aware of a hit on Mr. Perez  
5 because it was believed that he was cooperating on  
6 the Molina case?

7 A. At one time -- I wasn't aware that there  
8 was a hit. I had heard that supposedly he was  
9 cooperating --

10 MS. ARMIJO: Objection. Calls for  
11 hearsay.

12 THE COURT: Sustained.

13 MR. VILLA: Your Honor, we're not offering  
14 it for the truth.

15 THE COURT: You got your answer. It was a  
16 "yes" answer. So move on and see what the next  
17 question is.

18 BY MR. VILLA:

19 Q. Okay. So the answer was, yes, you were  
20 aware?

21 A. I wasn't aware. I said I had heard a  
22 rumor.

23 MS. ARMIJO: Objection, calls for hearsay.

24 THE COURT: Sustained.

25 MR. VILLA: And so, Your Honor, if you'd



1 like me to approach, I'd like to be heard on this.

2 THE COURT: Well, the jury will not  
3 consider this for the truth of the matter. They can  
4 only consider it for the fact that -- well, why  
5 don't you approach? I'm not sure that I'm seeing  
6 what the relevance is.

7 (The following proceedings were held at  
8 the bench.)

9 THE COURT: His state of mind doesn't seem  
10 to be important. What's the relevance of it? If  
11 it's coming in, it seems to me the only relevance is  
12 for the truth of the matter.

13 MR. VILLA: It's not offered for the  
14 truth. It's offered for when Mr. Cordova takes the  
15 stand and testifies about how he got Mr. Perez to  
16 talk about the Molina murder, and he's going to  
17 testify that he used the rumors to help Mr. Perez.  
18 So we don't care whether the rumors are true. We're  
19 offering it to show that they existed to inform Mr.  
20 Cordova's state of mind and Mr. Perez' state of mind  
21 when the statements were being made.

22 THE COURT: Well, I'll give the jury a  
23 limiting instruction. I guess I do see some  
24 relevance. I do recall Cordova talking about it.

25 MS. ARMIJO: It's relevant with Mr.

1 Cordova, not with this witness, especially when this  
2 witness said that he was unaware of it.

3 THE COURT: Well, but it establishes that  
4 the rumors were prevalent, and Mr. Martinez would  
5 have heard about it. So the existence of the  
6 rumors, I think, leads into the truth or nontruth of  
7 what Mr. Perez is about to testify on those tapes.

8 All right. I'll allow those questions.

9 MR. CASTELLANO: Just real quick, Your  
10 Honor, that opens the door to the redacted  
11 transcripts of Rudy Perez, where he has  
12 conversations with Mr. Baca, because as a result of  
13 the rumors, Mr. Perez talks to Mr. Baca, and Mr.  
14 Baca tells him he's okay, and he doesn't need to  
15 worry about anything.

16 THE COURT: I don't see it opening the  
17 door. Those are two different things.

18 MR. CASTELLANO: But that means Mr. Perez  
19 may have heard the rumors and had concerns about it  
20 and also addressed those rumors to Mr. Baca.

21 THE COURT: One is a Bruton problem.  
22 Relevance of a rumor. The other two, I don't see  
23 them opening the door.

24 (The following proceedings were held in  
25 open court.)

1 THE COURT: Ladies and gentlemen, you're  
2 going to hear Mr. Martinez testify as to what rumors  
3 he heard. You cannot consider what these rumors are  
4 for the truth of the matter. So it's only the  
5 existence of the rumors that you can consider, not  
6 the truth of the rumors in any way in the testimony  
7 that Mr. Martinez is about to give.

8 Mr. Villa.

9 BY MR. VILLA:

10 Q. So, Mr. Martinez, you heard rumors that  
11 potentially there was a hit on Mr. Perez, because it  
12 was believed he was cooperating?

13 A. I never heard there was a hit. I heard  
14 rumors that he was cooperating; that he'd been  
15 cooperating with STIU.

16 Q. So you heard rumors that Mr. Perez had  
17 cooperated?

18 A. That's what I heard rumors of.

19 Q. With respect to Molina?

20 A. Yes, sir.

21 Q. And a rumor like that, if it's true, could  
22 get Mr. Perez killed?

23 A. Yes, sir.

24 Q. So I want to take you back now to what  
25 happened with Javier Molina. And you testified in

1 pretty good detail about those facts. But I want to  
2 ask you -- specifically you said that Mr. Molina --  
3 after you started to choke him, I think you said his  
4 body started to give out; right?

5 A. Yes, I could feel his legs giving out.

6 Q. And it was your testimony that you wanted  
7 to give him a chance, so you didn't choke him all  
8 the way?

9 A. I loosened my grip, yes.

10 Q. But you did kick his legs out from under  
11 him; right?

12 A. To lay him down, yes. He was still in my  
13 arms. When I pushed his legs out, I was still  
14 holding him. I didn't just take him and drop him.

15 Q. You laid him down on his back?

16 A. Yes.

17 Q. To make it easier for Jerry Armenta and  
18 Jerry Montoya to stab him to death?

19 A. Yes.

20 Q. Mr. Molina was able to get up?

21 A. Yes, he was.

22 Q. And push his way out, and start running  
23 down the tier to the stairs; right?

24 A. Yes.

25 Q. And I think it was your testimony that he

1 said, "Okay, carnal, you got me. I'm leaving,"  
2 something like that?

3 A. "All right, all right, carnal. You got  
4 me. I'll leave."

5 Q. When he says, "carnal," he's talking  
6 about -- carnal means brother; right?

7 A. Yes, sir.

8 Q. The term that you guys used for each  
9 other?

10 A. Yes, sir.

11 Q. And Mr. Molina, before you killed him, was  
12 your carnal; right?

13 A. Yes, sir.

14 Q. So, as Mr. Molina is running down the  
15 stairs and he says that, didn't Mario Rodriguez tell  
16 him, "You're no carnal"?

17 A. Yes. By code --

18 Q. Can you answer my question? The answer is  
19 yes?

20 A. I don't know. I don't know if he said  
21 that.

22 Q. So you didn't hear?

23 A. I did not hear that.

24 Q. You didn't hear Mario Rodriguez say,  
25 "You're no carnal"?

1 A. No, I did not hear. He was on the top  
2 tier and I was on the bottom.

3 Q. And even though you could have saved  
4 Mr. Molina, you didn't, did you?

5 A. No.

6 Q. You weren't really a carnal to him, were  
7 you?

8 A. I was loyal to the SNM, sir.

9 Q. You weren't a carnal to Mr. Molina when  
10 you let him get killed, were you?

11 A. I was loyal to the SNM, sir.

12 Q. Answer my question.

13 A. Was I a carnal? Technically, when there  
14 is a paperwork, you're no longer a carnal. No, I  
15 wasn't a carnal to Javier.

16 Q. It's a yes-or-no question.

17 A. I just answered that, sir. I said when  
18 there is paperwork, you're X'd out. And when you're  
19 X'd out, knowing there's a hit on you, you're no  
20 longer a carnal. Javier Molina was not my carnal at  
21 the time.

22 Q. You never saw Mr. Molina's paperwork, did  
23 you?

24 A. No, sir.

25 Q. Would it surprise you that Mario Rodriguez

1 testified here in court that the paperwork wasn't  
2 much?

3 A. I'd heard rumor that we --

4 Q. My question to you, Mr. Martinez -- stop  
5 your answer.

6 My question to you, Mr. Martinez, is:  
7 Would it surprise you to learn that Mario Rodriguez  
8 testified here in court that the paperwork on  
9 Mr. Molina was not much?

10 A. Yeah.

11 Q. That would surprise you?

12 A. Like I said, I've heard it wasn't much.

13 Q. I'm not asking what you heard. I'm asking  
14 you whether that surprises you. It's a yes-or-no  
15 question.

16 A. Not really. But in a way, yeah, I have  
17 mixed feelings about it.

18 Q. You killed your carnal over "not much,"  
19 didn't you?

20 A. Yes. I'd be very shocked if that's the  
21 case.

22 MR. VILLA: No further questions, Your  
23 Honor.

24 THE COURT: All right. Thank you, Mr.  
25 Villa.

1 All right. Any other -- Ms. Bhalla?

2 MS. BHALLA: Not at this time, Your Honor.

3 Thank you.

4 THE COURT: Ms. Bhalla.

5 Mr. Jewkes?

6 MR. JEWKES: Very little, Your Honor.

7 MS. ARMIJO: Your Honor, didn't Mr. Jewkes  
8 already go? I believe it's --

9 THE COURT: Do you want to let him get  
10 done before you do your redirect?

11 MS. ARMIJO: Oh, sure, if he has more.

12 MR. JEWKES: It will be very limited, Your  
13 Honor.

14 THE COURT: Go ahead, Mr. Jewkes.

15 RECROSS-EXAMINATION

16 BY MR. JEWKES:

17 Q. Mr. Martinez, I'd like to clarify one  
18 point with you. On direct examination you talked  
19 about an undercover tattoo. Do you remember that?  
20 Did you use the term "undercover tattoo"?

21 A. Yes, sir, on myself, yes.

22 Q. On yourself. Okay. Why do you use the  
23 term "undercover"?

24 A. Because the SNM is usually bright and  
25 bold, big S, with an NM in it. Mine is more of a



1 collage, where you really got to look at it to  
2 actually see it. It's not a patch by itself. It's  
3 designed into the collage, where -- so it's  
4 undercover, like, because a lot of us, we're not  
5 supposed to go out there and represent to law  
6 enforcement, oh, we're from the SNM.

7 Q. Where is this tattoo on you, sir?

8 A. Right here, sir.

9 Q. All right. So it would be, say, like a  
10 disguised tattoo?

11 A. Yes, sir.

12 Q. But it is SNM?

13 A. Yes, sir.

14 Q. And where did you get it?

15 A. In Torrance County, which is Estancia, New  
16 Mexico.

17 Q. And when did you get it?

18 A. Probably August, September of '16. I'd  
19 say -- wait, yeah, September '16. We got picked up  
20 in '15, so --

21 Q. So we're talking about somewhere between  
22 August to September of the year, August 2016?

23 A. Yes, sir.

24 Q. Roughly two years, a little more than two  
25 years after the death of Javier Molina?

1 A. Yes, sir.

2 Q. Okay. And be fair to say that it was  
3 celebratory tattoo? In other words, to celebrate  
4 your entry into SNM?

5 A. In a way, yes.

6 Q. In a way?

7 A. I finally earned the right to carry the  
8 patch, yes.

9 Q. The right to carry the patch?

10 A. Yeah, the right to get the SNM tattooed on  
11 me.

12 Q. Something like a right of passage?

13 A. Yes, sir.

14 Q. Okay. And you told us that Javier Molina  
15 was your best friend?

16 A. Yes, sir.

17 Q. And yet over two years after his death,  
18 you celebrate his death with a tattoo?

19 A. I was a loyal member of the SNM at the  
20 time, sir.

21 Q. But you're not loyal now?

22 A. No, sir. When it comes to the SNM, the  
23 SNM comes before everything. They tell you that  
24 when you join. It comes before family; comes before  
25 friends; comes before everything. The SNM is your

1 family. The SNM is Number 1, no matter what. It  
2 comes before your wife, your children, everything.  
3 So being a loyal soldier for them, yes, I got it.  
4 But now I'm not.

5 Q. You didn't really believe all that, did  
6 you?

7 A. At the time, yeah.

8 Q. And what brought about the miraculous  
9 change in you?

10 A. Because I had seen where -- how they use  
11 people. I seen -- like I said, I wanted to right my  
12 wrongs. I've been carrying Javier's death on me for  
13 a long time.

14 Q. Let me stop. You wanted to what?

15 A. Right my wrongs.

16 Q. Right your wrongs. All right.

17 A. Yes, sir. I mean, I'd been carrying  
18 Javier's death with me for a long time. I mean, I  
19 know, like I've said many times, there is nothing I  
20 could do that's going to bring Mrs. Molina her son  
21 back.

22 MR. JEWKES: Pass the witness.

23 THE COURT: Thank you, Mr. Jewkes.

24 Ms. Armijo, do you have redirect?

25 MS. DUNCAN: Your Honor, before we start

1 redirect, can we approach for a moment?

2 THE COURT: You may.

3 (The following proceedings were held at  
4 the bench.)

5 MS. DUNCAN: I don't mean to be  
6 insensitive. But Javier Molina's wife is in the  
7 audience coming in, crying, going in and out,  
8 audibly crying. She's back in the back crying. I  
9 totally understand why this testimony is painful for  
10 her, but it's distracting.

11 THE COURT: What's the name of that lawyer  
12 back there?

13 MR. VILLA: Jess Lilly.

14 THE COURT: Who's the tall guy?

15 MR. VILLA: He's at the U.S. attorney's  
16 office.

17 THE COURT: Who is the tall guy that used  
18 to be with Jess Lilly back there?

19 MS. ARMIJO: Jerome.

20 MS. DUNCAN: Jess Lilly just left.

21 MR. VILLA: Maybe we can take a break.

22 MS. DUNCAN: Your Honor, could we not do  
23 that in front of the jury? Because I think the jury  
24 is going to associate that --

25 THE COURT: What do you want?

1 MS. DUNCAN: Take a brief recess, ask her  
2 to leave, and come back.

3 MR. CASTELLANO: Does the jury know who  
4 the next of kin is?

5 THE COURT: I don't even know who she is.

6 MR. CASTELLANO: I don't know that the  
7 jury knows who she is.

8 (The following proceedings were held in  
9 open court.)

10 THE COURT: All right. We'll take about a  
11 five-minute break. All rise.

12 (The jury left the courtroom.)

13 THE COURT: Ms. Molina, which one are you?  
14 Who is Ms. Molina?

15 All right. You've got two choices. You  
16 either compose yourself and you can stay in the  
17 courtroom, or if you can't compose yourself and  
18 you're going to make noise going in and out, you've  
19 got to stay out. All right? You've got to choose.  
20 So either -- make up your mind what you're going to  
21 do. If you think you're going to lose composure,  
22 leave, and don't make any noises going out. All  
23 right. Do you understand?

24 MRS. MOLINA: Yes, Your Honor.

25 THE COURT: If you don't, I'll have to ask

1 you to leave permanently. Do you understand?

2 MRS. MOLINA: Yes.

3 THE COURT: All right. So either compose  
4 yourself and you can stay in the courtroom --

5 MRS. MOLINA: I'm leaving.

6 THE COURT: All right. All rise.

7 (The jury entered the courtroom.)

8 THE COURT: All right. Be seated.

9 All right. Ms. Armijo, do you have  
10 redirect of Mr. Martinez?

11 MS. ARMIJO: Thank you, Your Honor.

12 THE COURT: Ms. Armijo.

13 REDIRECT EXAMINATION

14 BY MS. ARMIJO:

15 Q. Mr. Martinez, Mr. Jewkes was just asking  
16 you about the tattoo that you had on your arm that  
17 had an S. After Javier Molina was killed, at some  
18 point did you have a conversation with Daniel  
19 Sanchez about tattoos?

20 A. No, I wasn't around Daniel.

21 Q. Let me put a better timeframe on this.  
22 After you were charged in this case along with Mr.  
23 Sanchez, were you housed with him at some point?

24 A. Yes, in an indirect way. We were in Otero  
25 County. I want to say I was in restrictive housing

1 unit 1 and he was in restrictive housing unit 2. So  
2 we could yell back and forth over the walls in the  
3 rec yard.

4 Q. Did you have a conversation with him about  
5 a tattoo, tattoos that you would be receiving?

6 A. No, not at that time.

7 Q. Did you at any time have a conversation  
8 with him about tattoos?

9 A. Not necessarily. The only conversation  
10 afterwards, he told me, "You have my respect. Now  
11 you are officially a carnal in my eyes." So that, I  
12 took I earned the right to get it. He never  
13 officially said, "Oh, you can go get it now." But  
14 by him officially acknowledging me as an official  
15 carnal, that gave me the right to put it on.

16 Q. Did -- now, Ms. Duncan was asking you  
17 about, for example -- if I could have the Elmo,  
18 please.

19 Ms. Duncan was asking you about  
20 Defendants' Exhibit FP. Do you recall that?

21 A. Yes.

22 Q. And this is dated the 10th of November,  
23 2015?

24 A. Yes, ma'am.

25 Q. And what was the date, approximately, that

1 you had that conversation with Mr. Baca?

2 A. This was the week before Halloween, so  
3 whatever Halloween in October is. So the last week  
4 of October, I got to Dona Ana, the county, for Jerry  
5 Montoya's state case, or the day or so before, one  
6 or two days before Halloween.

7 Q. So when you were in the process of writing  
8 these affidavits and assisting with that  
9 prosecution, to the extent that you were going to  
10 have Jerry -- you were assisting Mr. Montoya, was  
11 that after the conversation that you had with  
12 Anthony Baca in reference to you not being a rat?

13 A. Yes. I did this all after the  
14 conversation.

15 Q. And why did you do that?

16 A. Because that was the plan to get Li'l  
17 Jerry Montoya off. Jerry Armenta was going to take  
18 the whole charge. And then they came to our -- it  
19 was brought to our attention that Jerry Armenta  
20 started cooperating with the state, and at that time  
21 the plan was to have me help Li'l Jerry Montoya get  
22 off, because -- so that was the plan. They all  
23 knew -- everyone knew that I was going to try to  
24 help Li'l Jerry Montoya get off.

25 Q. I believe the amount was close to \$1050



1 that you've received from the FBI?

2 A. Give or take \$50. I think it was \$1,100.

3 Q. And are you aware that the FBI would give  
4 it to you in chunks, so as not to have to come see  
5 you every month?

6 A. Yes, ma'am.

7 Q. And if your cooperation started in  
8 December, and went until the last payment or until  
9 now, would that be approximately 14 months? Would  
10 that be right?

11 A. Yes, ma'am.

12 Q. All right. Sorry, I don't trust my math.  
13 So if it's 15 divided by -- so would that be  
14 approximately \$75 a month?

15 A. Yes, ma'am.

16 Q. Now, did the FBI or anybody ever make you  
17 any promises about what your sentence would be?

18 A. No, ma'am.

19 Q. When you were talking to your wife, and  
20 she's throwing out numbers, why would you talk about  
21 such low numbers with her?

22 A. Because that was my wife thinking,  
23 knowing -- because my wife knew what happened -- so  
24 knowing that I wasn't a direct person that actually  
25 stabbed him, she was saying that, in her world, I

1 should get a lot less time than anything, because I  
2 had a very minimal role. That was just her throwing  
3 numbers. It was not me telling her I'm going to get  
4 this or I'm going to get that. I never mentioned  
5 the possibility. If you hear the conversation, she  
6 said, "Why can't you get this or that or even  
7 lower?"

8 I mean, that's just her throwing numbers  
9 out there.

10 Q. When you spoke to Daniel Sanchez in the  
11 vents, after Mario Rodriguez had told you about the  
12 plan, what was your belief as far as Daniel  
13 Sanchez's conversation with you?

14 A. That I did a good job; that I was -- like  
15 he said, he says, "Hey, you have my respect now. I  
16 won't talk shit about you no more. You're a carnal.  
17 You've earned my respect."

18 Q. I want to go back before the murder  
19 occurred, when he's talking to you, and he says,  
20 "Did Blue talk to you?" What, in your mind, was he  
21 referring to?

22 A. Did Blue tell me about what's going to  
23 happen about the plan to kill Javier.

24 Q. And did that, in your mind, verify that he  
25 had -- it was at his direction?

1           A.     Yes.   Once again, Mario told me, "Dan is  
2   making you go."   And when I was having the  
3   conversation with Daniel through the vent, "It needs  
4   to get done or else," knowing like he knew that  
5   Mario was going to talk to me, because he's the one  
6   that told Mario to go talk to me.

7           Q.     And Mr. Jewkes indicated that -- was  
8   talking about you and your relationship with Daniel  
9   Sanchez.   And you indicated that you thought he was  
10   a decent enough person, but that you disagreed with  
11   his conduct.   What did you mean by that?

12          A.     Just the way he carried himself.   The way  
13   he demanded the respect.   I mean, just his -- he has  
14   that -- he's a good guy, he's charismatic, I mean,  
15   but he'd always talk down on me, like I was a  
16   lesser, that I was a nobody to him.   So I didn't  
17   like the way he carried himself in that respect, how  
18   he conducted himself.

19          Q.     Now, you indicated with Mr. Villa that Mr.  
20   Perez had gotten into -- Rudy Perez had gotten into  
21   fistfights?

22          A.     Yes.

23          Q.     When did those occur?

24          A.     He had a couple -- well, he got back from  
25   his surgery, which I think he said he got back in

1 October or -- yeah, October of '13. So he had a  
2 couple in between October and March. One was with  
3 Jerry Montoya. I know that. He had a couple fights  
4 there.

5 Then he actually had another one when we  
6 were in Estancia with Vincent Garduno, and I'm  
7 actually one of the ones that broke that fight up.  
8 And after breaking that fight up, I ended up having  
9 to actually get in a fight with Vincent, because he  
10 was mad for the fact that I stopped him from beating  
11 up Rudy.

12 Q. Now, when you're talking to Mr. Jewkes  
13 about the hearing, the misconduct, you were talking  
14 about a statement that Ronald Sanchez wrote. Do you  
15 recall that?

16 A. Yes, ma'am.

17 MS. ARMIJO: May I approach the witness,  
18 Your Honor?

19 THE COURT: You may.

20 A. Yes, ma'am.

21 BY MS. ARMIJO:

22 Q. Are you familiar with that item?

23 A. Yes, ma'am. I'm the one that -- I  
24 actually wrote it in my own words and shot it up to  
25 him and told him what to write.

1 MS. BHALLA: Your Honor, I apologize. Can  
2 we have a reference to the exhibit or a Bates  
3 number? I'm sorry.

4 MS. ARMIJO: I don't have a Bates number.  
5 BY MS. ARMIJO:

6 Q. And what did you have Ronald Sanchez do  
7 for you as part of that process?

8 A. I helped him cover up my involvement by  
9 saying that I had him downstairs waiting, under the  
10 false pretense of making a spread. That was the  
11 story, that we were going to make a spread. There  
12 was never no spread ever involved. That was just  
13 the story that I gave him. "Hey, tell them I told  
14 you, hold on, I'll go help you make this spread.  
15 I'm going to go get high with Javier real quick."  
16 Then I told him, "Make sure you say" -- like I say,  
17 I wrote it out pretty much in my words saying, "Hey,  
18 at no point in time did you hear any altercation.  
19 At no point in time did you see me and Javier act  
20 aggressively or in any hostile manner towards each  
21 other." And I gave him, like, a spider web, and  
22 that's what he ended up coming out with. That was  
23 his version of it.

24 Q. And were you still an SNM Gang member at  
25 the time?

1 A. I was very active at that point in time.

2 Q. When you got the S tattoo on your arm,  
3 were you still an SNM Gang member?

4 A. I was very active and loyal.

5 Q. When Javier Molina was coming down the  
6 stairs after he had been -- or while he was being  
7 stabbed, did you consider him a carnal at that time,  
8 based on the paperwork?

9 A. At that point in time, no. Due to the  
10 fact of being paperworked, you're automatically X'd  
11 out. When it's been confirmed that there is  
12 paperwork, you're automatically X'd out. So he was  
13 no longer one of my brothers. As much -- like I  
14 say, on an individual basis he was a friend, but my  
15 loyalty lied with the SNM. And unfortunately, in  
16 the gang world, like I told them, that the SNM came  
17 before anything. They came before family, comes  
18 before kids, children, friendship, anything. Your  
19 loyalty lies with the SNM. So I had to put my  
20 friendship aside, and --

21 Q. And were you loyal to the SNM up until the  
22 time that you first decided to cooperate at the end  
23 of December in 2016?

24 A. Yes, ma'am, I was very loyal.

25 MS. ARMIJO: No further questions.

1 THE COURT: Thank you, Ms. Armijo.

2 All right. Mr. Martinez, you may step  
3 down. Is there any reason --

4 MS. DUNCAN: I'm sorry, could I just have  
5 a brief recross?

6 THE COURT: All right. Ms. Duncan.

7 RECROSS-EXAMINATION

8 BY MS. DUNCAN:

9 Q. Now, you claim that you had a conversation  
10 with Mr. Baca in late October 2015, correct?

11 A. Yes, ma'am.

12 Q. And Ms. Armijo asked you if you made these  
13 statements on behalf of Jerry Montoya after you had  
14 that alleged conversation with Mr. Baca?

15 A. Yes, ma'am. I signed that oath after the  
16 fact.

17 Q. Your first statement that you gave was in  
18 September 2014; correct?

19 A. Yes.

20 Q. That was before your alleged conversation  
21 with Mr. Baca?

22 A. The one I was speaking of was the signed  
23 affidavit.

24 Q. I'm not asking you about the signed  
25 affidavit. I'm asking you about the first statement

1 you gave.

2 A. Those are before, yes.

3 Q. And the second statement that you gave was  
4 in November; November 3, 2014; correct?

5 A. Yes.

6 Q. That was also before this alleged  
7 conversation with Mr. Baca?

8 A. Yes.

9 Q. And I think you testified that the  
10 statement you gave on November 10th, 2015 -- so  
11 that's Defense Exhibit FP, you -- that was drafted  
12 by Mr. Montoya's lawyer; correct?

13 A. Yes.

14 Q. And then you met with your lawyer and went  
15 over and made some changes; correct?

16 A. Yes, ma'am.

17 Q. We talked about the discovery in this  
18 case. You received a tablet with discovery in about  
19 June 2016?

20 A. Yes.

21 Q. And you had that tablet until it was taken  
22 from you last year; correct?

23 A. Yes, ma'am.

24 Q. And when was it taken?

25 A. May -- April, May. But at that time I did



1 not have it in my possession every day. There would  
2 be periods of time, which you're well aware of,  
3 where we'd have to send our tablets in to get them  
4 updated. And receiving them back would sometimes  
5 take --

6 Q. All I asked was when it was taken away,  
7 and that was May 2017; correct?

8 A. Yes.

9 Q. And when you testified you would sometimes  
10 say "you see -- you see," when you were referring to  
11 the video of the Javier Molina killing; correct?

12 A. Yes.

13 Q. Because you'd reviewed that video in  
14 discovery?

15 A. Well, of course, I was fighting the case.  
16 I was still an active member.

17 Q. I'm asking if you reviewed a video.

18 A. Yes.

19 Q. And you reviewed it multiple times;  
20 correct?

21 A. Yes.

22 Q. So you were explaining to the jury that  
23 when you see you on the video, this is what had  
24 happened; correct?

25 A. Yes.

1 Q. And that's from -- okay. So you -- the  
2 tablet was taken from you on May 2017 because you  
3 reset it?

4 A. Yes.

5 Q. And before you reset the tablet, you used  
6 Gerald Archuleta's tablet to access the internet;  
7 correct?

8 A. No.

9 Q. You never used Gerald Archuleta's tablet  
10 to send emails?

11 A. No.

12 Q. And are you aware that your tablet is  
13 being forensically reviewed?

14 A. Yes.

15 Q. And what do you expect that we will find  
16 from that forensic review of tablet?

17 MS. ARMIJO: This is beyond the scope of  
18 my redirect.

19 THE COURT: Well, I'll allow it.  
20 Overruled.

21 A. All right. They're going to find  
22 Facebook, they're going to find music videos, music  
23 downloads without videos, movies, porn movies,  
24 searches on USC, searches for sports, searches for  
25 school.

1 BY MS. DUNCAN:

2 Q. And for how long were you accessing the  
3 internet using your tablet?

4 A. From a little after February, a couple  
5 weeks into February, until I got it took away.

6 Q. So from February to May of 2017?

7 A. February, March -- yeah, April, May.  
8 Somewhere in that. Either April or May is when they  
9 came. So a couple months, two or three months.

10 MS. DUNCAN: I have no further questions,  
11 Your Honor.

12 THE COURT: Thank you, Ms. Duncan.

13 Ms. Armijo, do you have anything further?

14 MS. ARMIJO: No, Your Honor. Thank you.

15 THE COURT: All right.

16 Mr. Martinez, you're excused from the  
17 proceedings -- or you may step down.

18 Is there any reason Mr. Martinez cannot be  
19 excused from the proceedings?

20 MS. ARMIJO: No, Your Honor.

21 MS. DUNCAN: Yes, Your Honor. We'd ask to  
22 the Court to reserve Mr. Martinez with regard to the  
23 tablet.

24 THE COURT: All right. You're subject to  
25 being re-called, so you'll need to leave the

1 courtroom. You may leave the courthouse, but you  
2 may have to come back in. So be sure you don't  
3 discuss your testimony with anyone while this trial  
4 is taking place. Okay?

5 THE WITNESS: All right, sir.

6 THE COURT: Thank you, Mr. Martinez.  
7 Thank you for your testimony.

8 All right. Ms. Armijo, does the  
9 Government have its next witness or evidence?

10 MS. ARMIJO: Yes, Your Honor, Jack Vigil.

11 THE COURT: Mr. Vigil, if you'll come up  
12 and stand next to the witness box on my right, your  
13 left, before you're seated, Ms. Standridge, my  
14 courtroom deputy, will swear you in.

15 Mr. Vigil, if you'll come up to the  
16 witness box, it's on my right, your left, before  
17 you're seated, my courtroom deputy, Ms. Standridge,  
18 will swear you in.

19 THE CLERK: Please be seated. State and  
20 spell your name for the record.

21 THE WITNESS: Jack Vigil. J-A-C-K,  
22 V-I-G-I-L.

23 THE COURT: Mr. Vigil. Ms. Armijo.

24 MS. ARMIJO: Thank you, Your Honor.

25

1 JACK VIGIL,  
2 after having been first duly sworn under oath,  
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. ARMIJO:

6 Q. Can you please state your name.

7 A. Jack Vigil.

8 Q. And where are you employed?

9 A. Southern New Mexico Correctional Facility.

10 Q. In what capacity?

11 A. In full capacity.

12 Q. No, I mean, what's your job there?

13 A. Oh, I'm a correction officer.

14 Q. And how long have you been a correctional  
15 officer?

16 A. Six years.

17 Q. And what do you do as a correctional  
18 officer?

19 A. It varies on what post I pick,  
20 depending -- I can be a rover, control officer. It  
21 just depends.

22 Q. And are you stationed at Southern New  
23 Mexico Correctional Facility?

24 A. Yes.

25 Q. Have you been there the entire time?

1 A. Yes.

2 Q. Okay. And were you working on July 13 of  
3 2015?

4 A. Correct.

5 Q. Do you know what your position was on that  
6 day?

7 A. I was the unit rover.

8 Q. What does the unit rover do?

9 A. We are -- we've got to do our rounds,  
10 check the inmates, see how they're doing, see if  
11 anything is going wrong, make sure they get their  
12 tier time.

13 Q. Okay. Now we've heard a little bit -- and  
14 I think the jury has seen pictures of Southern at  
15 the time. Do you recall which unit you were working  
16 at?

17 A. I was working in 1-A.

18 Q. Okay. And 1-A, does that have -- how many  
19 different pods?

20 A. It has three pods.

21 Q. Okay. And the what pods are they?

22 A. It would be A pod, C pod and B pod.

23 Q. And are there colors associated with them?

24 A. Yes.

25 Q. What are the colors?

1 A. C pod is green, B pod is blue, and A pod  
2 is yellow.

3 Q. Okay. And is that just based on the  
4 colors of the doors on the inside?

5 A. It's based on the inside of the doors and  
6 on the outside of the doors, also.

7 Q. And so your job that day was to kind of go  
8 around, and as you say, roving -- self-descriptive  
9 of what you were doing?

10 A. Yeah, I was just going around, letting  
11 them out for tier time, switching them out, checking  
12 how everything is going on in there.

13 Q. Now, was tier time something, prior to  
14 that date, that was common?

15 A. Yes. They had -- they just -- had just  
16 gotten their tier time back.

17 Q. "They" being who?

18 A. The SNMers.

19 Q. Who was staying in that unit at the time?

20 A. The SNMers.

21 Q. SNM gang members?

22 A. Yes.

23 Q. Okay. Now, are you aware of an incident  
24 that occurred on July 13, 2015?

25 A. Yes.

1 Q. Okay. Tell us about that incident.

2 A. I was working overtime in 1-A, and we  
3 were -- we were just switching out the tiers. And  
4 as soon as me and my coworker left C pod, we went  
5 into B pod to switch out the tiers on that side. As  
6 soon as we walked out of blue pod, which is B pod,  
7 we were going to go to A pod, and that's when we  
8 heard a loud banging noise coming from one of the  
9 pods. And we checked all the pods, and it was  
10 coming from C pod.

11 And that's when we noticed Inmate Julian  
12 Romero covered in blood, and that's when we rushed  
13 in there, and we locked everybody down, and we  
14 pulled him out of there immediately.

15 Q. Okay. You said a lot of stuff there, so  
16 I'm going to just kind of go back for a minute. And  
17 if I can have -- I believe it's -- if we could  
18 please display 162 --

19 MS. ARMIJO: Sorry, Your Honor.

20 Q. Okay. Are you familiar -- and you may not  
21 have seen this. But it says that it is a unit floor  
22 plan for SNMCF. Would you agree that that may be  
23 how the unit that you were working that day may  
24 appear?

25 A. Yes.



1 Q. Okay. And is this bottom one down here --  
2 I'm making a little "X" where it says "day room."  
3 Which unit would that be?

4 A. That would be B pod.

5 Q. B pod?

6 A. Yes.

7 Q. And what color pod would that be?

8 A. That would be blue.

9 Q. Okay. And then -- and so you were talking  
10 a little bit about an incident that occurred. Which  
11 pod did that occur in?

12 A. It occurred in C pod.

13 Q. Which is which one? Is it the top one or  
14 the middle one?

15 A. The top one.

16 Q. Okay. Right here, C pod?

17 A. Yes.

18 Q. All right. And would that be green pod,  
19 as well?

20 A. Correct.

21 Q. Now -- and I marked the top one. And you  
22 indicated that you had let -- you had had tier time  
23 starting in which pod?

24 A. Green pod.

25 Q. Green pod?

1           A.     Yes. We had just switched the tier times  
2     in green pod, and as soon as we left, we went into  
3     blue pod.

4           Q.     Okay. And is that when you heard  
5     something?

6           A.     When we finished in blue pod and we were  
7     going to go to A pod, that's when we heard the  
8     banging on the door.

9           Q.     In blue pod?

10          A.     In C pod.

11          Q.     In C pod?

12          A.     Yes, we exit blue pod. As soon as the  
13     door closed in blue pod, that's when we heard a  
14     banging on the door. And we checked A pod. It  
15     wasn't A pod. So we turned around and we checked C  
16     pod, and it was C pod.

17          Q.     Okay. C pod being the one on the top?

18          A.     Yes.

19          Q.     Which is also green pod?

20          A.     Correct.

21          Q.     Okay. Just so that we're clear, you  
22     started out letting people out in green pod?

23          A.     Correct.

24          Q.     Which is the top here; correct?

25          A.     Yes.

1 Q. Then you left that area.

2 A. Yes.

3 Q. And then eventually you hear noise again;  
4 correct?

5 A. Correct.

6 Q. First you checked yellow pod?

7 A. Correct.

8 Q. And there was nothing going on there?

9 A. Yes.

10 Q. And then you checked what would be --

11 A. C pod.

12 Q. -- C pod; correct?

13 A. Yes.

14 Q. And that's -- and that's when you got  
15 that -- now, when you left C pod, before you heard  
16 something, how many inmates did you let out?

17 A. It was a total of four, I believe.

18 Q. And was that the amount that was to be let  
19 out?

20 A. Correct. It was going to be four at a  
21 time.

22 Q. Were you -- did you know, even, Julian  
23 Romero at the time, or no?

24 A. I knew who he was, but I normally don't  
25 work that unit as much.

1 Q. All right. But you did know it was an SNM  
2 unit?

3 A. Yes, I did know it was an SNM unit.

4 Q. Julian Romero, at the time of this  
5 incident, was he a young man, an older man?

6 A. He was an older man.

7 Q. Now, was he one of the individuals that  
8 was let out?

9 A. Correct.

10 Q. If you recall, who were the other  
11 individuals that were let out?

12 A. It would be Julian Romero, Conrad, Uranda,  
13 and I can't remember the last one.

14 Q. Conrad, are you referring to Conrad  
15 Villegas?

16 A. Yes.

17 Q. And at what -- when you heard, and went  
18 back to C pod, what was it that you observed?

19 A. I observed Julian Romero on the little  
20 window on the door. He was covered in blood. And  
21 he was banging on the door. So that's when we  
22 opened it. We rushed him out, and then we rushed  
23 in.

24 Q. All right. Now, have you seen the video  
25 in this case of the incident, or no?

1 A. I've seen portions of it.

2 Q. And are you anywhere in the video?

3 A. I think, because of the angle of the  
4 camera, you won't see me in there.

5 Q. And did you come in after the incident  
6 itself?

7 A. Yes.

8 Q. So when you opened up the door, you  
9 indicated that Julian Romero was at the door,  
10 banging?

11 A. Yes.

12 Q. Describe to the jury what he looked like.

13 A. He was beat up, a lot of blood all over  
14 his face; he had cuts, and I believe he had an  
15 indentation in his head.

16 Q. And what did do you at that point?

17 A. We called up the first team responders,  
18 and we let our supervisors know, and that's when we  
19 let our control officer know to open the door so we  
20 can get him out.

21 Q. And did you eventually get him out?

22 A. Yes. We got him out immediately, and we  
23 kept him on the side, and we -- that's when  
24 everybody started showing up to assist us, and then  
25 we went in there to lock everybody down.

1 Q. And was everybody locked down?

2 A. Yes.

3 Q. Now, did you see what Conrad Villegas was  
4 doing during the course of locking people down?

5 A. When I went in there, he rushed to the  
6 shower, and I knew that he was rushing to the shower  
7 to shower off the blood that he had had, and I know  
8 that --

9 Q. And why did you know that?

10 A. Because he was wearing sneakers, going  
11 into the shower.

12 Q. And you found that suspicious?

13 A. Yes, I did.

14 Q. Okay. Now, you said you let out four  
15 people, one of them being Julian Romero?

16 A. Yes.

17 Q. One of them being Conrad Villegas?

18 A. Yes.

19 Q. What were the other two individuals doing?

20 A. They were by the laundry cart. They were  
21 just minding their own business, like if nothing  
22 ever happened.

23 Q. So did that also narrow down your possible  
24 suspects?

25 A. Yes.

1 Q. Now, you said Mr. Villegas -- you saw him  
2 going into the shower with tennis shoes?

3 A. Correct.

4 Q. Okay. So what did you do at that point?

5 A. As soon as I saw him rushing to the  
6 shower, I told him to stop. And then as soon as he  
7 was walking out, I told him, like, "You really made  
8 everything easy for me. I already know it was you  
9 that started the whole thing."

10 So then as soon as we were locking them  
11 down, they still had us check every individual to  
12 see if they had any marks on them, and Conrad was  
13 the only one that had anything on him.

14 THE COURT: Ms. Armijo, would this be a  
15 good time for us to take a break?

16 MS. ARMIJO: Certainly, Your Honor. Thank  
17 you.

18 THE COURT: I appreciate your hard work.  
19 I know a lot of you have been coughing over there,  
20 and I appreciate you hanging in there. I appreciate  
21 all your hard work. We'll see you at 8:30 in the  
22 morning. Y'all have a good evening.

23 All rise.

24 (The jury left the courtroom.)

25 THE COURT: All right. I appreciate your

1 hard work. Y'all have a good evening. See you  
2 tomorrow.

3 (The Court stood in recess.)  
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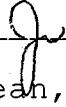
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3  
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages  
8 constitute a true transcript of proceedings had  
9 before the said Court, held in the District of New  
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 4th day of February, 2019.

13  
14   
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